Garney Morris, Inc. *and* International Brotherhood of Electrical Workers, Local 269. Cases 4–CA–18570, 4–CA–18863, 4–CA–19241, 4–CA–19487, 4–CA–19904, 4–CA–20210–2, and 4–CA–20309

November 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On November 12, 1992, Administrative Law Judge Walter H. Maloney issued the attached decision. The Respondent and the General Counsel filed exceptions, supporting briefs, and answering briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified and to adopt the recommended Order as modified and set forth in full below.

1. The General Counsel submits that the judge erred in finding certain unfair labor practices that were in fact not alleged by the General Counsel. We agree. Therefore we reverse the judge's decision regarding his findings of independent violations of Section 8(a)(1) of the Act set forth in section C,2 of his decision and designated (a), (e), (h), (m), (n), (u), (v), (w), and (y).[2] For the same reason, we reverse the judge's finding at section 4,e of his decision that employee Hughes' layoffs subsequent to June 1990 violated Section 8(a)(4) of the Act. In connection with his finding of the independent violation of Section 8(a)(1) designated (y), the judge found that Leadman Prendergast and the other leadmen were statutory supervisors. This finding of supervisory status was not based on any complaint allegation and is directly contrary to record evidence. Thus, we reverse it.

Additionally, we find it unnecessary to pass on the judge's findings that the Respondent engaged in certain threats and promises of benefits in violation of Section 8(a)(1) set forth in section C,2 of his decision and designated (p), (r), and (s) because these findings would be cumulative and in light of the Respondent's witnesses' denials of the conduct alleged and the judge's failure to make credibility resolutions necessary to the finding of the the violations. We further do not adopt the judge's finding at section C,2 designated (aa) that the Respondent threatened to engage in protracted litigation to defeat an organizing drive in violation of Section 8(a)(1) in light of the judge's failure to discredit the Respondent's witness' denial of the conduct alleged, and we will modify the judge's remedy accordingly.

2. The judge determined that the Respondent violated Section 8(a)(2) of the Act by establishing an employee committee. In this regard, the judge credited the testimony of the Respondent's former project manager that the committee was formed at the suggestion of the Respondent's president for the purpose of presenting grievances and suggestions directly to him rather than resorting to an outside bargaining agent. The Respondent excepts to this finding and refers to the Board's recent decision in *Electromation, Inc.*, 309 NLRB 990 (1992). We find nothing in that decision to cast doubt on the correctness of the judge's finding, which we

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. The Respondent also asserts in effect that the judge's rulings, findings, and credibility determinations are the results of bias. After a careful examination of the entire record we are satisfied that this allegation is without merit.

The General Counsel moved to strike as unsupported in the record portions of the Respondent's brief in support of its exceptions that refer to employee Harrison's alleged tardiness. In view of our decision here adopting the judge's finding that Harrison's discharge was unlawful, we find it unnecessary to pass on the General Counsel's motion.

We correct the following errors of the judge, which do not affect our decision. In conjunction with his finding that employee Raffa was unlawfully discharged, the judge erroneously stated that Raffa and employee Aldrich had attempted to call in when Aldrich's car broke down but the telephone at the jobsite was out of order. Testimony reflected instead that the telephone near the site of the breakdown was out of order. The remark made by Supervisor Stevenson that, as soon as the ''union shit'' blows over, prounion employees would be ''taken care of'' was made to employee Schooley and not to Aldrich, as the judge erroneously states at one point in his decision. Contrary to several statements by the judge, the parties agreed as to the validity of 31 authorization cards and submitted 10 disputed cards to the FBI. Finally, although the judge described the appropriate bargaining unit as including electricians, counsel for the the General Counsel stated at hearing without controversion that electricians are also known as mechanics.

The General Counsel excepts to the judge's suggestion that employee Quinn performed the Pre-Mix job before performing the lower Makefield job. It is unclear from the record in which order Quinn performed the jobs, but we conclude that this has no effect on his finding, which we adopt, that Quinn was unlawfully discharged. The General Counsel also excepts to the judge's failure to specify the dates the Respondent unlawfully laid off employee Hughes. Contrary to the General Counsel, the judge, at fn. 16 does set forth the time periods during which Hughes was laid off, and these periods differ slightly from the dates set forth in the General Counsel's brief in support of his exceptions. We will leave to compliance the resolution of these minor discrepancies.

[2] Regarding the conduct found unlawful designated (u) and (v), although it was not alleged in the complaint that Supervisor Stevenson made these statements, as the judge found and we reverse, it was alleged that Supervisor Schlack made these statements. Thus, the General Counsel, in his answering brief, requests the Board to find the conduct engaged in by Schlack to be unlawful. We decline to do so because Schlack, at the hearing, denied making the statements at issue and the judge failed to discredit his denial.

adopt.[3] As found by the judge, the committee was dominated and assisted by the Respondent's president from its inception during the Union's organizing drive for the express purpose of giving the employees an alternative to unionization with respect to discussing terms and conditions of employment. The judge's finding of a violation of Section 8(a)(2) is thus consistent with *Electromation*.[4]

3. The judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging or otherwise discriminating against various employees. The Respondent excepts to these findings and the General Counsel cross-excepts to, inter alia, the judge's failure to include a *Wright Line* analysis in his reasoning. 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). We adopt the judge's findings. In doing so, we note that, although the judge did not explicitly analyze the discharges and other discrimination with reference to *Wright Line*, his findings are consistent with that decision. In each instance, the judge essentially found a prima facie case of discriminatory conduct and considered and rejected as invalid each of the Respondent's proffered defenses to the allegations that its actions were unlawful. Also see *Limestone Apparel Corp*., 255 NLRB 722 (1981).

4. We adopt the judge's finding that the Respondent violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Respondent's employees in the unit set forth in the judge's decision as of January 1990, when the Union made a demand for recognition and bargaining. The Respondent contends that it had no duty to bargain with the Union or, alternatively, that any duty it had to bargain with the Union was extinguished, under the terms of an informal settlement agreement. Contrary to the Respondent, we do not find that the purported informal settlement agreement signed by the Respondent and counsel for the General Counsel in May 1991 precludes the Board from finding that the Respondent was under an obligation to bargain. As the judge noted, that agreement was never approved by the Regional Director or anyone else authorized to approve settlements.

Further, we note that any doubt the Respondent might have had about the status of that agreement was clearly resolved on August 27, 1991. On that date, the Region sent a letter to the Respondent confirming a telephone conversation in which the Respondent had been notified that an investigation of charges filed after the Respondent had signed the agreement could cause the Regional Director to withhold approval of the settlement agreement. Under these circumstances, we conclude that the Respondent's reliance on the purported settlement agreement is misplaced. Compare *NLRB v. Sav-On Drugs*, 728 F.2d 1254, 1256–1257 (9th Cir. 1984), in which the court discussed the general proposition that a party acts at its peril if it proceeds on the basis of a decision which is not final and concluded that the prevailing party in a Board proceeding could not reasonably rely on a lower level agency decision where it had notice that the Board had granted the opposing party's request for review.

5. To remedy the unlawful discharges and layoffs he had found, the judge recommended that the Respondent be ordered, inter alia, to offer discriminatees Raffa, Aldrich, Goulet, Hughes, and Quinn reinstatement. The General Counsel excepts to this portion of the judge's recommended Order except with respect to Quinn, pointing out that as to all the discriminatees except Quinn, the record reflects that the Respondent had previously offered reinstatement to these individuals and that the General Counsel did not seek such a remedy. Thus, we will modify the Order to delete the reinstatement remedy regarding these individuals.

The judge also recommended granting a *Gissel* bargaining order in this case to remedy the Respondent's unfair labor practices. *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969). The judge noted, ''It is hard to imagine any conduct on the part of an employer which could more thoroughly decimate an organizing drive and more surely render a Board election meaningless.'' The Respondent excepts to the imposition of such an order under the particular facts presented, and the General Counsel contends that the judge failed to fully support his recommended imposition of that remedy. We agree that the judge's recommended bargaining order is necessary and appropriate for the following reasons.

In *Gissel*, supra, the Court stated that in determining whether a bargaining order remedy is warranted, the Board may properly consider the extensiveness of the unfair labor practices in terms of their continuing effect on election conditions and the likelihood of their recurrence in the future to determine if the conduct has

[3] Although the judge found that the Respondent violated Sec. 8(a)(2), his Conclusions of Law inadvertently failed to include such a finding. Thus we modify his conclusions consistent with that finding to include as Conclusion of Law 9 that ''By forming, dominating and assisting the Outside Employee Committee, the Respondent violated Sec. 8(a)(2) of the Act'' and to renumber the subsequent conclusion accordingly.

[4] Member Devaney specifically concludes, consistent with his position in *Electromation*, supra, that the Respondent usurped the Sec. 7 rights of its employees to choose their own bargaining representative, and therefore violated Sec. 8(a)(2).

Member Raudabaugh finds, under the test set forth in his concurring opinion in *Electromation*, that the Respondent violated Sec. 8(a)(2). The Respondent completely dictated the structure of the committee and controlled its operations, the employees could reasonably view the committee as a substitute for collective bargaining through traditional union representation, the employees were never given assurances of their right to choose collective bargaining through traditional union representation and the Respondent's actions vis-a-vis the committee were motivated by antiunion animus.

a tendency to undermine majority strength and impede the use of traditional remedies. 395 U.S. at 614–615. After learning of the existence of union activity among its employees, the Respondent almost immediately, and systematically, embarked on a widespread antiunion campaign designed to discourage union support. The record reveals a large number and variety of unfair labor practices affecting a large number of employees, including repeated ''hallmark'' violations such as widespread threats of plant closure and job loss, and actual, unlawful layoffs and discharges of union supporters. Such violations are likely to have a long-term coercive impact and are among the most flagrant forms of interference with employees' Section 7 rights. See *DTR Industries*, 311 NLRB 833, 836 (1993), citing *Eddyleon Chocolate Co*., 301 NLRB 887, 891 (1991). Many of these serious unfair labor practices, significantly including a physical assault on a discriminatorily laid-off employee, were carried out by the Respondent's owner and president. The participation of a high-level manager in unlawful conduct exacerbates the natural fear of employees that they would lose employment if they persisted in their union activities. *DTR*, supra; *Koons Ford of Annapolis*, 282 NLRB 506, 508 (1986). Thus, we conclude that these violations, which threaten the very livelihood of employees, are likely to have a lasting impact not easily eradicated by the mere passage of time or the Board's usual remedies.

We also note that the Respondent's unfair labor practices began, as noted above, almost immediately after it learned of the unionization effort and continued unabated over a long period of time. Moreover, the Respondent's unlawful activities continued even after it agreed to enter into the purported informal settlement agreement it raises here as a defense to the imposition of the bargaining order. Significantly, in this regard, when the Respondent discovered in connection with its negotiations for the informal settlement agreement that an employee had signed an authorization card, it took discriminatory action against him. Thus, the Respondent's entire course of conduct reveals continued hostility toward employee rights and thus evidences a strong likelihood of a recurrence of unlawful conduct in the event of another organizing effort. Cf. *Eddyleon Chocolate Co*., supra, where the Board found the likelihood of recurring unlawful conduct to be great where the respondent revealed continuing hostility in its postelection misconduct.

We accordingly find that the possibility of erasing the lingering effects of the Respondent's unfair labor practices is slight and that the employees' representational desires expressed through authorization cards would, on balance, be better protected by a bargaining order than by traditional remedies.

ORDER

The National Labor Relations Board orders that the Respondent, Garney Morris, Inc., Levittown, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their union activities and forcing them to disclose either verbally, in writing, or by a showing of hands, their union sympathy or lack of union sympathy.

(b) Creating in the minds of employees the impression that their union activities are a matter of company surveillance.

(c) Threatening employees with layoff, discharge, or plant closure because of their union activities.

(d) Telling an employee that he has been discharged because of his union activities.

(e) Promising and granting increases in compensation in order to persuade employees to abandon their support for the Union.

(f) Soliciting employees to withdraw their support from the Union.

(g) Assaulting employees because of their union activities.

(h) Discouraging membership in or activities on behalf of International Brotherhood of Electrical Workers, Local 269, or any other labor organization, by changing disciplinary forms and procedures, by discharging or laying off employees, or by otherwise discriminating against them in their hire or tenure.

(i) Discharging or otherwise discriminating against employees because they have filed charges or given testimony under the Act or because charges have been filed under the Act on their behalf.

(j) Assisting or dominating any labor organization.

(k) Refusing to recognize and bargain collectively in good faith with International Brotherhood of Electrical Workers, Local 269, as the exclusive collective-bargaining representative of all the Respondent's full-time and regular part-time electricians/mechanics, apprentices, and helpers employed at its Levittown, Pennsylvania shop, exclusive of office clerical employees, guards, and supervisors as defined in the Act.

(l) Unilaterally changing wages, hours, or terms and conditions of employment of any bargaining unit employee.

(m) By any other means or in any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Disestablish and cease giving recognition or assistance to the Outside Employees Committee and notify its employees that it has done so.

(b) Offer Jerome Quinn immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make Jerome Quinn, Keith Raffa, Stephen Aldrich, Bruce Goulet, and John Hughes whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Remove from its files any reference to the unlawful discharges or unlawful discipline and notify the employees in writing that this has been done and that the discharges, layoffs, and discipline will not be used against them in any way.

(d) Recognize and, on request, bargain collectively in good faith with International Brotherhood of Electrical Workers, Local 269, as the exclusive collective-bargaining representative of all full-time and regular part-time electricians/mechanics, apprentices, and helpers employed at the Respondent's Levittown, Pennsylvania shop, exclusive of office clerical employees, guards, and supervisors as defined in the Act.

(e) Rescind the order discontinuing payments to its 401(k) fund and the order discontinuing gasoline payments.

(f) Resume making payments to its 401(k) fund and reimbursing employees for gasoline and toll payments, to make whole its employees for its failure to make gasoline and toll payments from the date such payments were discontinued until the date on which such payments have been resumed, and make whole its 401(k) fund for any and all losses of payments which have occurred since such payments were discontinued, with interest.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at the Respondent's Levittown, Pennsylvania shop copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT coercively interrogate employees concerning their union activities. WE WILL NOT force employees to disclose either verbally, in writing, or by a showing of hands, their union sympathy or lack of union sympathy.

WE WILL NOT create in the minds of employees the impression that their union activities are a matter of company surveillance.

WE WILL NOT threaten employees with layoff, discharge, or plant closure because of their union activities.

WE WILL NOT tell employees that they have been discharged because of their union activities.

WE WILL NOT promise or grant increases in compensation in order to persuade employees to abandon their support for the Union.

WE WILL NOT solicit employees to withdraw their support from the Union.

WE WILL NOT assault employees because of their union activities.

WE WILL NOT discourage membership in or activities on behalf of International Brotherhood of Electrical Workers, Local 269, or any other labor organization, by changing disciplinary forms or procedures, by discharging or laying off employees, or otherwise discriminating against them in their hire or tenure.

WE WILL NOT discharge or otherwise discriminate against employees because they have filed charges or given testimony under the Act or because charges have been filed under the Act on their behalf.

WE WILL NOT assist or dominate any labor organization.

WE WILL NOT refuse to recognize and bargain collectively in good faith with International Brotherhood of Electrical Workers, Local 269, as the exclusive collective-bargaining representative of all our full-time and regular part-time electricians/mechanics, apprentices, and helpers, exclusive of office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT unilaterally change the wages, hours, or terms and conditions of employment of any bargaining unit employees.

WE WILL NOT by any other means or in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL disestablish and cease giving recognition or assistance to the Outside Employees Committee and notify employees that we have done so.

WE WILL offer Jerome Quinn immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make Jerome Quinee, Keith Raffa, Stephen Aldrich, Bruce Goulet, and John Hughes whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to layoffs, unlawful discharges, and disciplinary actions and notify the employees in writing that this has been done and that the discharges, layoffs, and disciplinary actions will not be used against them in any way.

WE WILL recognize and, on request, bargain collectively in good faith with International Brotherhood of Electrical Workers, Local 269, as the exclusive collective-bargaining representative of all our mechanics in the unit set forth above.

WE WILL resume making payments to the 401(k) fund and WE WILL reimburse employees for any such payments that were not made since the time they were discontinued, with interest.

WE WILL resume making toll and gasoline payments and WE WILL reimburse employees for any such payments that were not made since the time they were discontinued, with interest.

GARNEY MORRIS, INC.

Timothy J. Brown, Esq. and *Steven Goldstein, Esq.*, for the General Counsel.

Garney Morris and *John Robinson*, of Levittown, Pennsylvania, for the Respondent.

Donald J. Kennedy, Business Manager, of Trenton, New Jersey, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing before me on a consolidated unfair labor practice complaint,[1] issued by the Regional Director for Region 4, which alleges that Respondent Garney Morris, Inc.[2] violated Section 8(a)(1), (2), (3), (4), and (5) of the Act. More particularly, the consolidated complaint alleges that the Respondent repeatedly interrogated its employees in a hostile fashion concerning their union activities, promised them better job assignments if they would reject the Union, advanced their pay review dates and granted increases sooner than they would normally be expected in order to induce employees to join the Union, promised company cars and assignments to better jobs in exchange for a rejection of the Union, threatened to fire various employees and to close the plant if the Union were selected, threatened to delay the processing of a pending representation case in order to discourage unionization, solicited employee complaints with a view toward adjusting them, physically assaulted an employee because of his union sympathies, solicited employees to sign a petition rejecting the Union, threatened to monitor the work of employees who were union sympathizers with special scrutiny, suggested to employees that they establish an organization of their own to discuss wages, hours, and terms and conditions of employment with the Respondent, and met with an employee committee for the purpose of discussing such matters. The consolidated complaint also alleges that the Respondent discharged or repeatedly laid off John Hughes because he gave a statement to a Board agent investigating a charge, and that he discharged Hughes, Keith

[1] The principal docket entries in this case are as follows:

Charge filed by International Brotherhood of Electrical Workers, Local 269 (the Union) against the Respondent in Case 4–CA–18570, on January 16 and amended on March 28, 1990; charge filed by Union against the Respondent in Case 4–CA–18679 on February 22, 1990; amended charges in Cases 4–CA–19487 and 4–CA–20210–2 filed by the Union against the Respondent on January 10 and November 4, 1991, and amended on March 4, 1992; charge filed by the Union against the Respondent in Case 4–CA–18863 on April 30, l990; order consolidated cases and consolidated complaint issued against the Respondent by the Regional Director for Region 4 on July 31, 1990, in Cases 4–CA–18570, 4–CA–18863, and one other case which is not a part of this proceeding; Respondent's answer filed on September 25, 1990; charge filed by the Union against the Respondent in Case 4–CA–19241 on September 25, 1990; complaint issued by the Regional Director for Region 4 against the Respondent in Case 4–CA–19241 on December 28, 1990; Respondent's answer in Case 4–CA–19241 filed on January 11, 1991; later cases consolidated with earlier cases by order dated March 19, 1991; Respondent's answer to further consolidated complaint filed on April 1, 1991; withdrawal of representation by Respondent's counsel on April 23, 1991; charge filed by Union against Respondent in Case 4–CA–19904 on July 8, 1991; charge filed by Union against Respondent in Case 4–CA–20210–2 on November 4, 1991; complaint issued by Regional Director for Region 4 against the Respondent in Case 19904 on November 26, 1991; charge filed by Union against Respondent in Case 4–CA–20309 on December 10, 1991; Respondent's answer in Case 4–CA–19904 filed on December 16, 1991; Respondent's answer in Case 4–CA–20309 filed on March 27, 1992; complaint issued by Regional Director against Respondent in Case 4–CA–20309 and consolidated with all other pending complaints, dated April 28, 1992; Respondent's answer to consolidated complaint filed on May 26, 1992; hearing held in Philadelphia, Pennsylvania, on July 20–24, 1992; and briefs filed with me by the General Counsel and the Respondent on September 24, 1992.

[2] Respondent admits, and I find, that it is a Pennsylvania corporation which maintains its principal place of business in Levittown, Pennsylvania, where it is engaged in the electrical contracting business. During the preceding year it performed services valued in excess of $50,000 directly outside the Commonwealth of Pennsylvania. Accordingly, it is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

Raffa, Stephen Aldrich, Bruce Goulet, Michael Harrison, and Jerome Quinn because of their union activities. The consolidated complaint further alleges that, on and after December 5, 1989, the Respondent had a duty to bargain with the Union as the representative of its full-time and regular part-time mechanics, apprentices, and helpers[3] but that it failed and refused to do so and, in fact, made or threatened to make several unilateral changes in working conditions without bargaining. Among these unilateral changes were the use of a new disciplinary warning form, discontinuance of contributions to a 401(k) retirement plan, and change of company policy concerning payment of mileage incurred by employees in driving their automobiles to jobsites. The Respondent entered a general denial to these charges and states that the individuals named in the complaint as dischargees were fired either for lateness or incompetence and slowness on the job, or were laid off for lack of work. On these contentions, the issues here were joined.[4]

FINDINGS OF FACT

A. *The Unfair Labor Practics Alleged*

The Respondent is an incorporated electrical contracting business which is wholly owned and operated by its president, Garney Morris. His immediate subordinate is the Respondent's vice president, John Robinson.[5] The Respondent has been in business for nearly 20 years and performs electrical installation at jobsites throughout the metropolitan Philadelphia area. On some occasions, it has also performed contracts at more distant jobsites as well, including a contract in California. It has always operated on a nonunion basis and its employees have never had a collective-bargaining representative. Although the size of its work force fluctuates, it now has a complement of about 40–45 employees. That figure can and has increased considerably when large installation contracts have been undertaken. Respondent's headquarters is on Emilie Road in Levittown, a suburb of Philadelphia.

The Union has its headquarters in Trenton, New Jersey, and represents electricians in the construction industry in southern New Jersey and southwestern Pennsylvania. Its business manager, Donald J. ''Reds'' Kennedy, and Garney Morris have known each other for some time. In fact, at one time before the events in this case arose, Kennedy had asked Morris to sign a contract with the Union, but Morris refused. This request was made late in 1988 when Kennedy supplied Morris with five or six union electricians under a so-called letter of assent to work for a double-breasted company operated by Morris. About January 1, 1989, he told Morris that he would have to sign a contract or the Union would withdraw its members from his projects. Morris refused. It was at that time that the Union decided to begin an organizing drive among the Respondent's employees.

Over a period of months, Kennedy was able to compile a partial list of names and addresses of company employees with the assistance of certain of the Respondent's employees who were in sympathy with the Union's effort. On October l9, 1989, Kennedy sent individually typed and addressed letters to each employee for whom he had an address. It read, in part:

> I have been talking to several of your co-workers about the pay and working conditions you are presently receiving from Garney Morris Electric. Some of their complaints were:
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> 1. Tools are in poor working condition.
> 2. Fringe benefits (no longer company paid), travel pay and reimbursement for gas.
> 3. Personal vehicles (not reimbursed for use).
> 4. Pay scale (not a set pay scale).
> 5. Not a very good training program.
> 6. Job security (everyone is afraid to express themselves for fear of losing their jobs).
>
> These complaints are not new to the electrical contracting industry. The Union has found the solution to these problems by being able to negotiate a contract that establishes wage scales, fringe benefits, and working conditions.
>
> . . . .
>
> Wages, a Journeyman Electrician now earns $23.56 per hour, a foreman is given a 10% premium above the journeyman. Everyone receives hospitalization, two pension plans, and an annuity plan. WAGES AND BENEFITS ADD UP TO A SUM OF $29.80.
>
> If you find your pay too little, the benefits lacking, and your working conditions less than desirable, maybe you should join a union.

One of the recipients of this letter was Garney Morris Jr., son of the owner, who was working for his father as an apprentice. Garney Morris Sr. testified that the mailing of this letter was the first indication he had received that the Union was interested in organizing his Company.

Shortly thereafter, Morris convened an evening meeting of his employees at the Holiday Inn in Bristol, Pennsylvania. It was the first of two such meetings. About 50–60 employees attended. Before the meeting began, Morris received from Kennedy, in an envelope Kennedy had left for him at the desk of the motel, a letter containing certain ''do's'' and ''don'ts'' for a company experiencing an organizing campaign. It was in the nature of a warning by the Union to the Respondent's management to observe the law and the rights of its employees. Before meeting with bargaining unit employees, Morris held a separate caucus for management employees who were in attendance. He read to them the list of ''do's'' and '' don'ts'' he had received from Kennedy. He asked them to keep careful notes of the proceeding and to make an assessment of which employees each manager felt were for the Union and which were against it. At a later point in time, the managers compared their notes with Morris.

During the meeting, Morris told employees that he was upset that they had taken their grievances to ''Reds'' Kennedy and warned them that, as a result of this activity, the

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[3] The General Counsel premises its allegation of a violation of Sec. 8(a)(5) of the Act on 41 union designation cards which were signed by unit employees on or before December 5, 1989, and requests a bargaining order under the holding in *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969).

[4] Errors in the transcript were noted and corrected.

[5] The record in this case is somewhat confused by virtue of the fact that Morris and Robinson acted alternatively as counsel for the Respondent during the trial of the case. Neither is an attorney.

Company might not survive. A brief question and answer session followed.

Late in October 1989, John Henry, the leadman and supervisor of the Respondent's U.S. Pipe job at Burlington, New Jersey, took a day off and made a tour of four or five of the Repondent's jobsites. He was accompanied by Robert Demi, a long-time employee and sometime leadman for the Respondent. I credit the testimony of former Project Manager Edmund F. Armstrong that Henry and Demi undertook this mission at Morris' request. They utilized a company car which was at Henry's disposal.[6] Henry brought with him some copies of Kennedy's organizing letter which he had duplicated after blanking out the name and address of its original recipient. During the course of his talks with men on these jobs, he used these copies as forms to be signed by anyone wishing to declare his opposition to the organizing effort.

Demi and Henry spoke to a group at the U.S. Pipe job which included Keith Raffa. Henry told employees that Garney Morris was on vacation and that, when he returned from his vacation, he was going to close down the business. He stated further that if any employee did not sign one of the papers he presented, that employee would not work after Morris returned to the office. He also informed his listeners that the signed papers would be presented to Morris to let him know who was supporting him. Henry warned that, in the event of unionization, Morris would close down the existing business and take a few loyal employees with him to form another business. Raffa spoke up and said that he did not want to sign one, whereupon Henry told him that he would have to sign it before going back to work or else he would not go back to work. An hour or so later, Henry summoned mechanic William R. Warner to the Company trailer at the U.S. Pipe jobsite and asked him if he was going to sign the form. Warner replied that he still had the form with him.[7]

On their visit to the Art Craft job, Henry and Demi told employees the same things they had said elsewhere. They asked employees to sign forms renouncing the Union, which would then be given to Morris, and stated that if the Company went Union, Morris would close it down. At the Air Products job, Henry and Demi repeated the same message and again solicited signatures from employees renouncing the Union. They told these employees that they should not go with the Union because, if they did, they would be left without a job. They also said that, if employees did not sign the petition which was being presented to them, the Company would close even if a majority of the employees voted against the Union, asserted that Garney Morris could shut down and open up under a new name without any union supporters. At the end of the signature collection effort, Henry and Demi obtained about 30 forms containing renunciations of the Union. Demi's letter contained the handwritten notation, ''I never want to talk to you, Mr. Kennedy.'' Henry's simply read, ''—— em, Garn!''[8]

The Union held a meeting for prospective members at its hall in Trenton on the evening of November 3. At this time, a number of the Respondent's employees signed authorization cards. Others took cards with them and mailed them in. As more fully discussed, infra, by December 5, the Union had in its possession a total of 41 authorization cards signed by Respondent's employees in a unit then composed of 73 full-time and regular part-time journeymen, apprentices, and helpers. Early in January 1990, Kennedy phoned Morris and asked for recognition. Morris refused.

On the evening of November 14, 1989, Morris held a second meeting for employees at the Holiday Inn in Bristol. Buffet dinner was served. The memo he circulated to all employees stated, ''We can discuss any of your problems. Let's put this behind us.'' Morris suggested that employees get together, form a committee of their own, and present their grievances directly to him. Credited testimony of former Estimator Edmund F. Armstrong, who actively participated in the ongoing effort to resist unionization at the Company before he was terminated, established that Morris followed up this suggestion in the weeks to come by repeated requests to management employees to get moving with the formation and discussion with an employee committee, which took on the name Outside Employees Committee. At the November 14 meeting, Morris also warned employees that closing down was one of his options. Morris announced that salary reviews would be moved forward so that pay increases would take place sooner than they normally would under previous company practice, which called for a 90-day review of all new employees and annual reviews thereafter. He also promised that existing company cars would be made available to more employees as additional cars were purchased. He referred to the annual company Christmas party, assuring employees that, despite rumors to the contrary, a Christmas party would take place as usual. It was at this meeting that he said that Keith Raffa had been coming to work late and had better watch himself because he was on ''thin ice.'' Morris asked his listeners ''Let's put our problems behind us. How many of you support me?'' In the course of the meeting, Fred McRoberts, a partsman and truckdriver, asked employees for a showing of hands to indicate which of them were behind Garney Morris in opposing the unionization of the Company.

Morris inserted a notice to all employees in their pay envelopes on November 22, 1989. It referred to ''personnel discussions'' on November 14, 1989, the date of the second meeting at the Holiday Inn and read, in part:

[6] They visited the Respondent's Art Craft job at Tullytown, Pennsylvania, the Air Products jobsite at Menalpin, New Jersey, and Henry's own jobsite at Burlington, New Jersey.

[7] Some employees who acceded to Henry's request had their own letters from Kennedy with them and signified their opposition to unionization by signing these letters.

[8] Henry testified that he had not intended to turn these forms over to Morris and was not sure what he did with them. He opined that the clerical employees in the company office may have forwarded them to the main office with the weekly timesheets. They were obtained by the General Counsel from the Company by a subpoena directed to the Respondent to produce certain company files. Henry's testimony on this and many other items was preposterous and totally unworthy of belief.

> Beginning Thursday, November 30, 1989, the new leadman bonus schedule is as follows:
>
> | | |
> |---|---|
> | Single man on job | .50 cents per hour |
> | Leadman with one or two men | .50 cents per hour |
> | Leadman with three or four men | .75 cents per hour |
> | Leadman with five to nine men | 1.00 per hour |
> | Leadman with ten to fifteen men | 2.00 per hour |
> | Leadman with sixteen and over men | 3.00 per hour. |
>
> As in the past it is your responsibility to put either L-50, L-75, L-1.00, L-2.00, or L-3.00 on your time card under the job name. Do not put this on the four copy.
>
> As in the past the leadman bonus will be paid at the end of the month.

At one of his weekly staff conferences with management personnel, Morris observed that these raises would have to be made to appear as if they had been planned before October 25 or the Company would be charged with making an illegal promise to head off unionization. At one of these meetings, Morris also urged management personnel to try to identify union sympathizers. He said he had received some names of union sympathizers directly from Local 269 as a ''pay back'' for favors that he had done for them in the past.

During the fall of 1989, various management employees of the Respondent had personal conversations with employees in which they voiced the Company's opposition to unionization. As they were leaving one of the meetings at the Holiday Inn, Company Estimator James Horan, in the presence of Armstrong and mechanic Larry Schrager, said, ''I'm tired of this ____ Union shit,'' at which point Armstrong asked Schrager, ''You're not for the Union, are you?'' Schrager replied that he was not in favor of the Union because he needed his job. A few days later, at the Arrow Terminal in Philadelphia, Respondent's scheduler Richard Scott told Schrager that the Union was a stupid idea and that ''Garney would never go union.'' He insisted that Morris would close down before doing so. On another occasion in the shop at Levittown, Demi told Schrager to ''back off'' from the Union, adding that Garney was not going to go Union and could close the Company down and open up under another name, in which event loyal employees would go to work for him at his new company.

During a discussion with employee William A. Whalen III, which took place in the driveway of the shop at Levittown in early November 1989, Morris told Whalen, ''I have great plans for you. I can't say much because the union [drive] is going on. You'll be making $15 an hour some day and leadman pay running a job. I don't think you'd want a Union because a union can't guarantee you work like I can.'' He also assigned Whelan to work at a prevailing wage jobsite at the Navy Yard, Boggs, and Princeton, where the hourly rate was $23 rather than $15 because of the requirements of the Davis-Bacon Act. In October 1989, at the Baldes Material jobsite, Estimator and Project Manager Charles Stevenson told mechanic David Schooley and mechanic Rich Goshee that, as soon as this ''union shit'' blows over, certain people who were organizing for Local 269 would be ''taken care of.'' He mentioned the name of mechanic Steve Aldrich in particular.

In the fall of 1989, mechanic John Hughes called the office and spoke with Scott concerning his schedule for the following day. In the course of this conversation, Scott told Hughes that Garney had heard that he was for the Union. He suggested to Hughes that he let Garney know his feelings as soon as possible. The following day, Hughes went to the office and spoke with Morris. He told him, in an ambivalent way, that Morris ''didn't have to be concerned'' about how Hughes felt about the Union. However, Hughes, a card signer, did not admit to Morris that he supported the organizational campaign. At one of the company meetings which took place at the Holiday Inn, Fred McRoberts told employees that, if the Company were unionized, there would be a good chance of a layoff and job security would not be as good. At a much later point in time, at the Hoeganese job in Logan, Pennsylvania, Stevenson told Whelan and Estimator John Schlack that he had come out to the Hoeganese job to spy on Schlack and that Schlack was sent there to spy on Whelan. During his visit to this jobsite, Stevenson cautioned Whelan to ''watch his back.'' Whelan had been attending classes which were a part of an IBEW apprenticeship program. Stevenson said that the Company was trying to find out if Whelan was doing his homework on the job, because such activity could be considered engaging in union activity during working hours.

At a staff meeting in October or early November, Morris told the staff that he felt that Tucker Hurcaine, Keith Raffa, and Steve Aldrich were union supporters and that he was going to have them fired. He asserted that they were all young and foolish and that this was a good time in their lives to learn a lesson. Morris also noted that John Hughes and Robert Burgman were union supporters and that Keith Raffa was a schoolmate of Morris' son. At the time of his discharge on November 16, 1989, Raffa was working on the U.S. Pipe job at Burlington, New Jersey, a job being run by Henry.

In January 1989, Raffa had received an increase from $5.50 an hour to $6.75 an hour, together with a commendation which was placed in his record by Robinson to the effect that ''Keith is a diligent hard-working helper who is always on time and willing to work . . . his work has been complimented by Gene Ennis, Charlie Stevenson, and other mechanics.'' He first heard about the organizing campaign when he received a letter from Kennedy late in October 1989. Raffa went to union meetings and spoke favorably about the Union to fellow employees. On November 9, 1989, he signed an authorization card and mailed it to the union hall. As noted previously, he refused to sign a letter rejecting the Union when requested to do so by Henry, at which point Henry threatened Raffa's job.

Early in November, Raffa was summoned to a private meeting in Morris' office in Levittown. Raffa had not worked the previous Sunday, as he was scheduled to do, and was reprimanded by Morris for his failure to show up. Morris told him that he could fire Raffa for violating company policy but was not going to do so. He then told Raffa, ''I am having trouble sleeping wondering why anyone would be so unhappy that they would want a union in the company.'' A few days later, Morris mentioned Raffa by name at the

second employee meeting at the Holiday Inn, saying, as noted above, that Raffa was on ''thin ice.''

Raffa carpooled to his job at the U.S. Pipe project in Burlington with Aldrich. On the morning of November 16, Aldrich had a flat tire on the way to work. The two men called the office trailer at the job to say that they would be late but the phone was out of order. They arrived 5 minutes late and signed in at 7:05 a.m. Henry did not see them arrive but knew they were late because he had already drawn a line on the sign-in sheet so that anyone arriving thereafter would be identified as a latecomer. There were three other names on the sheet following the signatures of Raffa and Aldrich.

About 7:35 a.m., Henry called Morris at the company office and reported that Aldrich and Raffa arrived late. Morris told Henry to fire Raffa. Aldrich later received a warning for lateness but there is no evidence of discipline of any kind being meted out to any of the others who were late.[9] About 11:45 a.m. Henry summoned Raffa to the construction trailer, showed him the signin sheet, and told him that he was fired. He indicated that Raffa could go to the office and talk to Morris if he wanted.

When Aldrich heard about the discharge, he phoned Morris and told him that their late arrival was not Raffa's fault, explaining that the flat tire was on his car and the incident was his fault. Morris replied that the question of Raffa's discharge was none of Aldrich's business. Aldrich then explained that they had called the construction trailer to report that they would be delayed by a flat tire, but the phone was out of order. Morris retorted that they should have tried to put a call through to another phone. (In another conversation with Aldrich which took place later in November, Morris told Aldrich that he had fired Raffa for something personal and reiterated that the whole matter was none of Aldrich's business.)

When Raffa spoke with Morris on the afternoon of his discharge, he asked him why he was being fired. Morris replied that it was because he was late. Raffa argued that he had been only 5 minutes late. Morris replied that Henry had reported that he was 30 or 40 minutes late. Raffa insisted that it was only 5 minutes and that it was not his fault, noting that he and Aldrich had called in but the phone was not in order. Morris said he knew the jobsite phone was out of order but argued that there was a phone across the street which they could have used. The argument went on. Morris agreed that Raffa might be right and that the late arrival was not his fault but, because Morris had already fired him, it would look bad in the Company for him to reverse himself because the people in the Company ''think I am God'' and he did not want to look bad in their eyes by changing his mind. He then told Raffa that he was going to make an example out of him, that he was not going to take ''the union stuff,'' and that he was not going to let the Union tell him how he should run things.

Michael Harrison began working for the Respondent as a mechanic in September 1989. His job application disclosed that he had belonged to IBEW Local 439. During the course of a prehire interview, Robinson referred to this fact and told Harrison that he would have to check with Morris before hiring him because of this fact. Robinson asked Harrison how he felt about unions generally. Morris was on vacation at the time. Harrison was hired after Morris came back from vacation. During his brief tenure of employment, he was complimented on his work by several leadmen.

Harrison first learned of the union drive from Whalen at the U.S. Pipe jobsite. He spoke favorably about unionization to several employees, including Charles Stevenson. On October 31, Harrison signed a union card. He was one of several employees to whom Henry and Demi spoke about declaring their opposition in writing to the Union by endorsing a reply to Kennedy's membership solicitation letter. Harrision declined to do so.

At the first employee meeting at the Holiday Inn, Harrison spoke with Morris and asked him for a leadman's job. Morris asked him what he was making and Harrison replied $3.50 an hour. Morris told Harrison that anyone making that kind of money should be able to run a job. Harrison told him that he wanted to hear what the Union had to say and Morris replied that he could understand that attitude.

After the meeting, during a conversation with other management officials relating to which employees were leaning in which direction, Morris was heard to remark that he did not trust Harrison. He said that Harrison had worked as a union employee at Campbell Soup and, in a dispute which had arisen, the Union had not supported him. Armstrong credibly testified that an inspection of Harrison's attendance records was made in order to find a basis for discharging him. Armstrong testified credibly that Harrison and others were sent to a jobsite where the contractor insisted on drug tests for all employees in hopes that Harrison would flunk the test. He did not flunk it.

On November 6, Harrison had a flat tire on the way to work and phoned Bruce Prendergast, the leadman on the job, that he had a problem and would get at work as soon as he could. When he arrived, Prendergast told Harrison that Scott had visited the jobsite. He warned Harrison to ''watch [his] ass because they were out to get [him].'' On the following day, Harrison was late for work because of a delay in traffic caused by the opening of a drawbridge. About 2 p.m. that day, he was informed that Scott had phoned the jobsite to say that Harrison was being discharged for lateness. The discharge took place just before Harrison's 90th day on the job.

On receiving news that he had been fired, Harrison went to the company office and spoke with Morris. He complained to Morris that he was being fired because he was prounion. Morris replied that he was unaware of Harrison's union sympathies and was simply going on Scott's recommendation.[10]

Aldrich himself was a class B mechanic.[11] He was hired in August 1988, and worked steadily for the Respondent

[9] Aldrich testified without contradiction that November 16 was the first time he had ever seen a line drawn on a sign-in sheet at 7 a.m.

[10] Harrison's discharge was the subject of a charge in another case. The charge was withdrawn, with the consent of the Regional Director, as part of an out-of-Board settlement. The General Counsel is seeking a finding in this proceeding that Harrison was discriminatorily discharged not to provide Harrison with an additional remedy but in order to permit Harrison's authorization card to be counted in determining the Union's majority status on a date approximately 1 month following the discharge.

[11] There is some confusion in the record as to the classifications of Respondent's employees. Apparently it had class A, B, and C mechanics, as well as apprentices and helpers. There were four classes of apprentices, each having a separate designation year depending on how long he had been serving an apprenticeship. Respondent had no

Continued

until he was discharged on December 21, 1989. The last several months of his employment were spent on the aforementioned U.S. Pipe job, a 25,000-man hour project which lasted for more than a year and on which, at one time, the Respondent employed 40 men on 2 shifts. On November 16, the date that Raffa was discharged, Aldrich received a form from Morris which read:

> As per my discussion at the 11–14–89 meeting and previous discussions your review date has been adjusted from *4–27–90* to *1–27–90*. Please mark your calendar and call for an appointment in advance. I will then get together with you, John Robinson, and Rich Scott.
>
> Thank you.

During the organization campaign in the late fall of 1989, Aldrich provided the Union with the names and addresses of employees with whom he worked, as requested by Kennedy, so that the Union could use them for its mail campaign. He talked to various employees in order to interest them in joining Local 269, passed out approximately 20 authorization cards, and signed a card himself on November 6. Henry testified that Aldrich was one of the employees working on the U.S. Pipe job whom he knew were making ''disparaging pro-union'' remarks to others. Aldrich admits that he told Henry that he was'' 100% union. On one occasion Henry asked Aldrich if the latter thought that ''Garney would go union.'' Henry then made the statement that Garney would never go Union and would close the shop first. On another occasion, Supervisor Charles Stevenson told Aldrich that, as soon as this ''union shit'' was over, certain people who had been helping the Union organize should be ''taken care of.''

In December 1989, while the U.S. Pipe job was still in progress, Aldrich was transferred by the Respondent to what is referred to in the record as the Blades job in Baltimore. It was a two-man job. On December 21, Aldrich was laid off by Scott, who told him that the layoff was prompted by lack of work. The Blades job had not yet been completed so David Schooley was left in Baltimore to finish it. Aldrich began looking for other work and, in so doing, came across a want-ad which Morris had placed in the Philadelphia *Inquirer* for industrial and commercial electricians. In mid-January, Aldrich received a call on a Wednesday from Scott informing him that he wished to put Aldrich to work on the following Monday. I credit Aldrich's testimony that Scott said that he would call him the following Sunday evening to tell him where to report for work. Aldrich said that he would be out of town and asked Scott to leave a message on Aldrich's answering machine. I credit Aldrich that Scott did not call to leave any instructions on Sunday nor did he contact Aldrich on any other occasion to tell him where to report for work.[12] Aldrich did not work for the Respondent thereafter until July 3, 1990, when he was reinstated following the execution of a settlement agreement of an unfair labor practice charge that was filed on his behalf.[13]

Bruce Goulet had been a journeyman electrician for 8 or 9 years before coming to work for the Respondent in October 1989. He applied for work in response to a want-ad which the Respondent had placed in the Levittown *Courier-Times*. The ad solicited electricians having 5 years of industrial and commercial experience. It stated: ''We offer great working conditions and benefits plus $500 bonus after 90 days of employment.''

Goulet had been a self-employed electrician and was looking for a job because he needed money to pay some back taxes. He was interviewed by three management officials—Tom Wysor, Robinson, and Morris. At that time, he made them aware of the fact that he had been self-employed. He also told them that, as a private employer, he had signed a letter of assent with Local 269 which entitled him to hire employees through the Union's hiring hall. Although there was no discussion during the interview concerning the purchase from Goulet of his customer list, they did discuss the fact that Goulet had some tools and equipment for sale and the Respondent agreed to rent a pipe bender from him.

Goulet worked on the night shift at the U.S. Pipe job. He distributed about 14 or 15 authorization cards on that shift and, on November 7, 1989, signed a card himself. On or about January 15, 1990, he was summoned to the office and laid off, assertedly for lack of work. The layoff took place 87 days following the date of his employment. Two weeks later, Goulet stopped by the office to collect some money which the Respondent owed him for the rental of his pipe bender. While he was speaking with one of the secretaries, Morris walked up to Goulet, grabbed him by the shirt, and yelled angrily, ''you and 'Reds' Kennedy get the hell out of my office.'' Morris then escorted Goulet to the door. A charge was filed on Goulet's behalf which led to his reinstatement on July 3, along with Aldrich.[14]

On December 27, 1989, Morris sent the following notice to all employees:

> I hope your Christmas was wonderful and that you all will have a happy, healthy, New Year. I am looking forward to the 90's with you guys. I am hoping it will be better than ever for all of us.
>
> As discussed previously, we will have our first monthly meeting of the New Year on Wednesday, Jan. 17, 1990. The meeting will be held at Charlie's Place on Rt. #l, Langhorne, at 6:30 pm.
>
> I hope your group of 5 outside employees[15] will join us for dinner and conversation.

formal apprenticeship training program. From time to time it sent employees to take short-term specialized courses, such as how to handle electrical work on toxic waste sites. Some of its employees were even taking IBEW apprenticeship training classes. Any classification attached to an employee's name did not designate a standard pay rate, because the Respondent had no fixed scale and every employee had an individual rate.

[12] I discredit Scott's statement that Aldrich had told him during their phone conversation that he would be unavailable for work because he would be ''skiing and partying.''

[13] Several discriminatees were reinstated with backpay pursuant to a settlement of unfair labor practice charges which took place in the summer of 1990. However, this settlement agreement was never approved by either the Regional Director or anyone else authorized to approve settlements, so it need not be formally set aside in order to litigate the underlying charges.

[14] The parties stipulated that Goulet was laid off January 9, 1990, recalled July 12, 1990, laid off again on September 5, recalled a second time on November 16, and laid off again on December 7.

[15] The phrase ''outside employees'' refers to field employees working at jobsites, as distinguished from office personnel employed at the Levittown headquarters. The number eventually grew to six.

If you have any questions, please feel free to call me.

In January 1990, Kennedy called Morris, told him that he had a card majority, and would like to negotiate and conclude a collective-bargaining agreement with him. Morris refused. Kennedy explained that it was his practice to make such calls before filing a representation petition. He filed a petition on March 28, 1990, which has been blocked by the pendency of the charge here. (Case 4–RC–17326.)

Early in January, a meeting of the Outside Employees Committee took place at a church hall across the street from the Respondent's office. The hall is a place which the Respondent has used from time to time for meetings in exchange for electrical maintenance work which it occasionally performs for the church. Employees were notified of the meeting by Scott, who told leadmen in the field when they called in for routine job instructions to pass the word to employees that the meeting would take place. An estimated 20 employees attended, including Henry.

The meeting was conducted by employee Rich Goshee. He asked employees to voice their complaints so that they could be forwarded to Morris. At this meeting, a committee of six was elected to represent employees. A vote was taken; two each were selected from the ranks of the mechanics, the apprentices, and the helpers.

The originally scheduled dinner meeting at Charlie's Place was postponed; instead, a breakfast meeting was held at the Holiday Inn on February 6, 1990, which was attended by Morris, several management officials, and the six-man employee committee. The committee had drawn up a list of 14 items that it wanted to discuss with Morris. These items were drawn from complaints received from employees at the January meeting. They ranged from travel pay and gas reimbursement to weekend overtime, paycheck delivery, and tools. The parties did not get around to discussing all the items on the committee list. Morris granted a few of the requests but refused to make any changes concerning most of them. He agreed to issue credit cards to certain employees for gasoline purchases. He said he would attempt to provide paychecks on Wednesdays for employees who were working out of town, and he agreed to pay overtime for holiday work. Since the conclusion of the breakfast, which the Respondent paid for, no other meetings have ever taken place, either between the committee and its members or the committee and Morris.

John Hughes was a mechanic who was hired on August 7, 1988. During the organizing campaign in the fall of 1989, Hughes handed out union cards to fellow employees and, on November 4, 1989, signed his own card. As noted above, Morris on one occasion had indirectly asked him if he was for the Union and Hughes responded with an evasive answer. He attended the meeting of the committee, was elected to the committee, and attended the breakfast meeting with Morris at which employee grievances were discussed. In April 1990, Hughes was working on the Oxford Valley job and was laid off. He asked Morris for an assignment in May and was given 5 days' work, after which time he was laid off again. He went to the office and spoke with Scott about working on another job but Scott said that he had nothing for him. While Hughes was in the shop, a leadman named Burgman called in and asked Scott to assign two more men to a job that Burgman was running. Hughes asked Scott for one of the slots on Burgman's job, but Scott simply replied that he ''did not know.'' A mechanic named Osher was then transferred from the job he was on to Bergman's job. Hughes then asked Robinson for work and was turned down. Sometime later, Scott phoned Hughes and asked him if he would be agreeable to working 1 day a week. Hughes said he would do so if it would not affect his unemployment compensation, so he was assigned to 1-day jobs in each of the 2 ensuing weeks and was given two other short-term assignments.[16]

On April 30, l990, the Union filed a charge claiming that Hughes and another mechanic, Al Cotrell, had been laid off for discriminatory reasons (Case 4–CA–18863). On June 25, an amended charge was filed in the same case but naming only Hughes as a discriminatee. Early in July, Hughes was summoned to the Company's office where he spoke with Morris and Scott. Morris told him that he knew that he had filed a charge and an amended charge against the Respondent. He complained that he did not know why Hughes had filed these charges because no one had treated him unfairly. Morris went on to say that every time his lawyer talks to a Board agent about a charge it costs him $206 an hour, and every time someone files a charge it also costs him money. He asked Hughes why the latter had not come to Morris and talked to him about his complaint rather than taking his case to the NLRB. Hughes responded that he did come in on a couple of occasions to talk with Morris, but that Morris was not around. Morris excused himself by saying that he had been out of the office trying to get work for the Company when Hughes came in. Morris then asked Hughes why he was not at work that day. Hughes explained that Scott had assigned him the previous evening to the Portion Packaging job at Bristol. Hughes' car was in the shop so he had arranged for a ride to the jobsite with another employee, Brian Clattenburg. Scott then changed the assignment and told him to report instead to a job in northern New Jersey. Hughes objected, saying that he had no car, so Scott suggested that he arrange for a ride with a mechanic named Steve Takas. Hughes was not able to reach Takas and tried to phone Scott to inform him of the problem but could not reach him. Morris faulted him for not making greater efforts, telling Hughes that he should have gotten up at 5 a.m. and kept on making phone calls until he found a ride.

In August 1990, Hughes was again laid off, this time from the Permacel job. He went to the office and complained about the layoff to Robinson, asking the latter why he had been laid off when men with less seniority had been retained. Robinson said that it was not any of his business and told him to ''get the hell out of the office.'' He came back to work for the Respondent in the fall of 1990 on the Hydrocarbon job. Scott had called to inform him about the job. He told Hughes that it was a long-term project, and that he would be working there until he retired from the Company. Hughes worked at the Hydrocarbon job for 1 day and was again laid off. When he asked Scott the reason for the layoff, Scott replied that the leadman, Nick Dippolito, did not want him on the job because of his ''bad attitude.'' Morris admit-

[16] During this period of time, Hughes was off from April 17 to May 10, from May 8 to June 11, and from June 13 to 15, from September 17 to October 3, from October 11 to 19, and from November 7 to 12.

ted at the hearing that, during periods when Hughes was on layoff status, the Respondent had transferred employees with less seniority from one jobsite to another, even though Hughes was available for recall to the openings in question.

In addition to the layoff, Hughes was given a warning slip on the Respondent's new employee warning report form which read:

> Nick Dippolito at the Hydrocarbon job called on 11–6–90 and asked me to send someone else. He didn't want John back, stating that he had a bad attitude. He was even afraid this would affect his performance on the job.

Hughes wrote on the form:

> I did not have a bad attitude and worked to the best of my ability. Nick said my work was fine.

At the same time, Hughes was given a second warning on the Employer's new warning form which read:

> Breaking Co. rules.
> 1) No call or no show by 10:00 am on 11–5–90
> 2) Scheduled off but was told to call in the am in case there was work.
> 3) After (2) calls from me to John 1) 9:30 2) 10:30. Didn't hear from John till late afternoon. Asked him where he was. He told me it was none of my business.

On this warning report, Hughes wrote:

> I was scheduled off and I can't afford to wait for possible work. Every other time I called in and there was never work.

The form contains a place for the employee to sign indicating ''I have read this 'warning decision' and understand it.'' Hughes refused to sign his name under this statement on either warning report.

A few weeks later, Hughes went to work on the Dynatec job. On this job, he received a third warning report, purportedly initiated by Schrager and Goshee, dated 12–3–90, which read:

> Recently on two projects the leadmen have informed us of your lack of productivity. You are hereby informed of this feedback and I request that for whatever reasons that you have lost your former productivity you get it back and become the productive employee you are capable of being.

On this warning report form, Hughes wrote:

> During the past 2-1/2 years I have worked here I have always been a productive worker. I am as productive now as I have always been. I believe this warning is because of my union activity and this is a retaliation.

Scott asked Hughes to sign this form and he refused, saying the complaint was a total farce. He said that he had never before had a problem with either Goshee or Schrager. He accused Goshee of being very antiunion and said that Schrager was just out for personal gain. Scott called Robinson on the phone and reported that Hughes had refused to sign the form. He handed Hughes the phone and the latter spoke directly with Robinson, who told Hughes that, if he did not sign the employee warning form, he could not go back to work. Hughes persisted in his refusal to sign the form and left the office.

Hughes returned to the office 2 days later to sign the warning form. While he was waiting to see a company official, Morris came by and told him that no one was trying to ''break his balls.'' However the Company had to start keeping a written record of everything because of ''everything that was going on.'' He urged Hughes to reconsider and to sign the form, repeating earlier statements that, if Hughes did not sign the form, he would not return to work. On December 5, 1990, Hughes signed the form containing the third warning. A month later, he received a fourth warning, dated 1–24–91, which read:

> Time card not turned in by Thurs 9 am on 1–24–91. Gave J. Hughes a copy of this warning and a copy of pg. 3 and 4 of co. rules on 1–24–91.

Hughes' response was that this was just more blatant harassment because of his union activities. Hughes had never before received a warning on two or three occasions when he was late in turning in his timecard.

Concurrently with the events recited above, the Respondent has persistently refused to recognize and to bargain with the Union. However, it has, from time to time, made changes in its operations relating to employee compensation and other matters. As noted before, in July 1990, the Respondent began using a new and different disciplinary warning form. For years it had utilized an internally generated document which read:

OFFICIAL NOTIFICATION FROM THE OFFICE OF GARNEY MORRIS, INC.

Name: _____ Date: _____

Due to the regulations concerning safety, unemployment compensation, disability insurance, workman's compensation, company rules, etc., this has been entered into your personnel file:

[ ] Informal Warning # 1, 2, 3
[ ] Warning # 1, 2, 3
[ ] Reprimand # 1, 2, 3

Reason:

Issued By: _____ _____
John Robinson Richard Scott

Approved by: _____
President

_____
Vice - President

In its place, another more elaborate form was instituted. It included a checklist of violations, containing a place for ''company statement'' in which a narrative description of the violation of company policy could be outlined. There was also a place on the form where the employee could recite his version of the incident or alleged infraction and sign his name. Thereafter, the form contained a section where the

Company could recite its ''warning decision,'' after which the employee who received the ''warning decision'' was called on to sign his name under the legend which read: ''I have read this 'warning decision' and understand it.''

In explaining his reason for making the change, Morris wrote the Regional Office in the course of the investigation of the charge:

> At times employees were just given a copy of the [previously used] notice in their paycheck and at times they were called in to discuss the violation and then given a copy in their paycheck.
>
> After several employees expressed that the violation was not entirely correct and that they wished that they had a chance to refute or agree with the notice before it went into their employee file, we purchased the ''Employee Warning Report'' and began to use them in July 1990. Now any employee who is reprimanded in writing must come into the office, read the warning and either agree or disagree with the charge and sign the warning accordingly.
>
> I felt that this system was completely fair because a person has the chance to give his side of a story and to correct or even have the charge dismissed. It seems to me that my efforts to treat employees fairly have resulted in an unfair labor practice charge.

With regard to the change in disciplinary forms, Scott told Hughes that they had been implemented ''because of everything that has been going on'' and because the Company needed to keep records of these matters.

Late in October 1991 the Respondent made two changes in its compensation package. They were set forth in a notice distributed to all employees on October 24, 1991, which read:

> Beginning today we must all begin to really tighten our belts. As you know, the economy is very poor, our work load is very light and unemployment in this country is again on the rise. In order to keep as many men working as possible we must temporarily stop the company contributions to the 401K and eliminate gas and toll benefits to employees who are driving their personal vehicles. I hope you will all try your best to car pool with employees who have company vehicles.
>
> For those with company vehicles, make sure you follow all of the gas rules and mark all gas slips as directed (especially with the vehicle number).
>
> . . . .
>
> These cost cutting measures will go into effect October 24, 1991.
>
> NOTE: There will be exceptions to the gas rule. However, they *must* be cleared through Cathy in payroll before the exception occurs.

In his testimony, Morris explained that, as of the time of the hearing in July 1992, the Company was still not making contributions to the 401(K) plan but was considering a resumption of such payments. He also explained that the Company was still making gas payments to employees who carpooled and had not in fact discontinued making toll bridge reimbursements.

Jerome E. Quinn was hired by the Respondent in 1988 as a class A mechanic. At the time of his discharge on June 28, 1991, he was making $14.25 an hour. Under circumstances not apparent from the record, he was restored to the Respondent's payroll sometime later and, at the time of the hearing, was employed as a truckdriver at an undisclosed rate of pay.

During the Union drive in the fall of 1989, Quinn passed out union cards to other employees and, on November 7, 1989, signed his own card and mailed it in to the union office. His son, Thomas Quinn, was also employed by the Respondent and signed a union card the day after his father did. On November 21, 1990, Jerome Quinn received a merit increase of 75 cents per hour.

In April 1991, J. Quinn happened to be in the company office in Levittown. During the course of a discussion between employees Whalen, William Gosser, and himself, Morris thanked both J. Quinn and Gosser for doing a good job on the Allied project to which they had been assigned in Baltimore. J. Quinn had received OSHA training for working on toxic jobsites and had been assigned to the Allied project for this reason. Following that discussion, Morris told Quinn that he had lost $700,000 on the U.S. Pipe job but, by September 1991, he would be out of debt and would have sufficient funds to fight the Union. Morris told Quinn that he could appeal his case four times and keep it in litigation for 3 or 4 years, adding that, ''if the Union thinks it's going to get in here, they are going to have a long wait.'' An unfair labor practice hearing on pending cases was scheduled for May 6, 1991. The hearing never took place. Instead, a settlement was arrived at, pursuant to which the General Counsel disclosed the authorization cards in his possession on which he was relying in order to establish the Union's majority status. In the course of this disclosure, it was revealed that Quinn had been a card signer.[17]

In the following month, Quinn was assigned to work at a jobsite in New Jersey. During a discussion with Henry concerning this job, Henry told Quinn that, if Morris went Union, he would keep his four top mechanics. He asked Quinn if the latter thought that he was one of them and Quinn replied in the negative. Henry went on to say that Morris would get rid of his other mechanics and they would be on the outside looking in. Henry also told Quinn that Morris would have enough money to fight the Union as soon as he got out of debt. Quinn replied that he did not care about the Union because he was going to retire in a few years. At or about this same point in time, Robinson had occasion to speak with Quinn at the company office and told Quinn that he had received reports from various leadmen that Quinn was taking too long to perform his assignments. He told Quinn to speed up his pace.

Quinn and Henry had been sent to a job for the First Prince Corporation at Freehold, New Jersey. Henry was designated as leadman. While on that job, the customer's elec-

[17] Part of the proposed agreement was that the Respondent would agree to recognize and bargain with the Union, if, on examination of the cards by an FBI handwriting expert, it could be determined that the signatures of a majority of unit employees were valid. The FBI verified 32 signatures but felt that the evidence of validity of the other signatures was inconclusive. Their validity was established at the trial in this case by the testimony of the individual card signers.

trical technician complained to Henry that Quinn was standing around, doing nothing, and asked Henry to send another man to the job the following day because the customer was under a time constraint in finishing the job.

Quinn experienced some difficulties with customers in June. He was sent to hook up a conduit and wiring on a production line at Pre-Mix Industries. While on the job, Quinn was having difficulties and sought the assistance of the customer's systems manager, who told him that, if he knew how to wire the production line, he would not have contracted with the Respondent to do so. The customer then called Scott to complain and to request that the Respondent send a competent employee to finish the job. The Respondent pulled Quinn off the job and dispatched a replacement. In a follow-up letter to the Respondent, the customer complained that the job was quoted with a 2-day estimate but it took ''your man bumbling on the job'' 4 days and he still had not finished the assignment.

Late in June, Quinn was assigned to install the electrical connections necessary to operate a water cooler at a swimming pool in Lower Makefield Township. He was told to seek out the pool superintendent and find out from him exactly what needed to be done. When he arrived at the jobsite, Quinn found that there were no parts available and had to drive to an electrical parts store in Trenton to obtain the necessary items to complete the job. A week and a half later, Scott spoke with Quinn and complained that he had turned in 5-1/2 hours on the swimming pool job when it should have taken only 2 hours. In fact, the installation work did take only 2 hours but the rest of Quinn's time was spent driving to and from the jobsite from the company office and in going to Trenton to obtain the required parts. Quinn testified that Scott knew at the time of the dispatch that no parts were available at the jobsite but were available at the company office. He had not informed Quinn of this fact and, instead, had given him a purchase order to buy parts at a supply house. On June 28, Scott informed Quinn when he returned to the office from a return visit to this jobsite that he had no more work and that he had been taking too long on jobs. He was laid off at this point.

B. *Analysis and Conclusions*

1. Supervisory and other agency issues

The Respondent admits only that the president of the Company, Garney Morris, and its vice president, John Robinson, are supervisors within the meaning of Section 2(11) of the Act. Confining the designation of supervisor to these 2 individuals would mean that between 40 and 80 mechanics, located at jobsites throughout eastern Pennsylvania and southern New Jersey, would have only 2 supervisors to oversee their activities in any controlling and meaningful way. Such a ratio is contrary both to Board precedent and to the facts in this record.

One of the individuals in question, John Henry, was the project foreman at the U.S. Pipe job in Burlington, New Jersey, the largest undertaking the Respondent had ever placed under contract. Under his control were 6 leadmen and 50 other employees. As the highest ranking employer representative on the premises, he spent most of his working time doing supervisory work, including the daily assignment of work to all employees and he maintained an office in the Company's onsite trailer. Although he could not hire a new employee, he could remove an employee from the jobsite and his recommendations for the discharge or discipline of employees were routinely adopted. Plainly, Henry was a supervisor within the meaning of the Act and should be excluded from the bargaining unit.

Edmund Armstrong, James Horan, Charles Stevenson, Tom Wysor, and Richard Scott were all classified as estimators. Their job was to obtain contracts for the Respondent and to supervise, from the Respondent's office in Levittown, Pennsylvania, any jobs they obtained. Armstrong hired and fired employees, Scott regularly and routinely assigned men to jobs and transferred them from one jobsite to another, and at least Armstrong, Horan, Stevenson, and Wysor could discharge employees. They attended weekly management meetings and, along with partsman Fred McRoberts,[18] attended several meetings of management staff with the Respondent's labor counsel during which they mapped out the strategy to be used in resisting the Union's organizing campaign. They were all supplied by Morris with a list of ''do's'' and ''dont's,'' instructions for company representatives who were engaging in antiunion activity. In the case of McRoberts, such activity made him a nonsupervisory agent of the Respondent. In the case of the others, such activity not only conferred on them the status of nonsupervisory agents but, when taken together with other indicia of supervisory authority, reinforces the conclusion that they were statutory supervisors for whose words and conduct the Respondent is vicariously liable. I so find and conclude.

Jack Schlack was also a supervisor within the meaning of Section 2(11) of the Act. Schlack was an estimator and supervised work at various jobsites, including the Hoeganese jobsite at Milton, Pennsylvania, and another jobsite in California. He could assign work to employees working at these jobsites and was responsible for seeing to it that the customers at these jobs were satisfied. These factors make it clear that the Respondent was also responsible for Schlack's words and conduct during the course of the Respondent's antiunion campaign.

2. Independent violations of Section 8(a)(1) of the Act

The Respondent violated Section 8(a)(1) of the Act by the following statements and conduct:

(a) At the first meeting of employees held at the Holiday Inn in Bristol, Pennsylvania, Morris expressed to the assembled employees his displeasure that they had taken their grievances to ''Reds'' Kennedy and warned them that, as a result of their union activities, the Company might not survive. This statement was not a prediction of consequences based on objective facts but a threat, similar to many which were uttered by Morris and others at various times to various employees, that the Company would be closed in response to unionization. The threat was illegal and violated Section 8(a)(1) of the Act.

(b) John Henry, a supervisor, and Robert Demi, a mechanic, visited various jobsites in late October for the purpose of soliciting employees to sign written renunciations of

[18] Armstrong testified credibly that the Respondent's management had included McRoberts at their antiunion meetings so they could use the services of a nonsupervisor to do and say things that supervisors are forbidden by law to do.

the Union. They did so at Morris' request, using a company vehicle in the process, and were both agents of the Respondent while carrying out this activity. On at least three different jobs they asked employees to sign documents renouncing their interest in unionization. These documents were to be forwarded to company officials. Asking employees to disclose their union sentiments is coercive interrogation, especially when they are requested to place their positions in writing. When such activity was undertaken in an organized, systematic way, against a background of other forms of illegal coercion, such interrogation violates Section 8(a)(1) of the Act.

(c) When, in the course of this solicitation effort, Henry told employees that Morris was going to close down the business when he returned from his vacation, Henry uttered a threat which violates Section 8(a)(1) of the Act.

(d) When, during the same effort, Henry told employees that any individual who did not sign would be discharged when Morris returned to the office, he uttered another threat which violated Section 8(a)(1) of the Act.

(e) Henry's specific threat to Raffa, who had objected to signing the renunciation letter, that Raffa would have to sign the document or he would not be allowed to go back to work, was another violation of Section 8(a)(1) of the Act.

(f) When Henry summoned mechanic William R. Warner to the trailer at the U.S. Pipe jobsite and asked him specifically if he was going to sign, Henry violated Section 8(a)(1) of the Act.

(g) Henry's statement, uttered at some jobsites during his signature collection effort, that the Respondent would close down the Company if employees did not sign the renunciation letter even if they eventually voted not to unionize, and his further threat that the Respondent would simply shut the business down and open it up under another name were patent violations of Section 8(a)(1) of the Act.

(h) The Respondent held a buffet dinner for employees at the Holiday Inn on November 14, 1989. The invitation from Morris to employees to the Respondent's employees suggested that one of the purposes of the meeting was to ''discuss any of your problems.'' At the meeting, the Respondent suggested that a committee of employees be selected to bring employee concerns to the attention of management. This solicitation of grievances with a view toward adjustment during an organizing campaign was a violation of Section 8(a)(1) of the Act, and there is no doubt that Morris intended to adjust, or at least to convey to employees his intention to adjust, the grievances brought to his attention during this meeting.

(i) At the November 14 meeting, Morris again warned employees that one of his options was to close down the business. A threat of this nature was a clear violation of Section 8(a)(1) of the Act.

(j) At the November 14 meeting, Morris announced that annual pay reviews would be accelerated and promised additional purchases of company cars so that existing cars, normally used only by office personnel, could be made available to field personnel as well. Previous to this meeting, Morris told his management staff that he was aware that the principal employee complaint which had brought on the union effort was the slowness of pay increases. It is obvious that his remarks at the November 14 meeting were aimed at meeting a union objection to his pay practices. As such, these promises constituted a violation of Section 8(a)(1) of the Act.

(k) A week later, the Respondent circulated a written announcement that pay increases for leadmen, ranging from 50 cents to $3 an hour, would be implemented on or about November 30. Morris told a staff meeting that these raises would have to be made so that they would appear to have been planned before October 25. This pay increase was a further response to the Union's organizing effort and was a violation of Section 8(a)(1) of the Act.

(l) At the November 14 meeting, McRoberts, in the presence of Morris and other supervisors, suggested to employees that they make a showing of hands to indicate who supported the Union and who did not. Asking employees to make a public display of their union sympathies is a form of coercive interrogation and inference with Section 7 rights which violated Section 8(a)(1) of the Act. Morris also told employees, ''Let's put our problems behind us. How many of you support me?'' This question also violated Section 8(a)(1) of the Act for the same reasons that McRoberts' suggestion did.

(m) McRoberts voiced the opinion to employees at one of the Holiday Inn meetings that there would be a good chance of a layoff and that job security would not be as good if the Company became unionized. Such statements constituted an illegal threat by a nonsupervisory agent and a violation of Section 8(a)(1) of the Act.

(n) At a staff conference, Morris asked his management team to try to identify union sympathizers in the work force. Asking supervisors to engage in surveillance of the union activities of employees was a violation of Section 8(a)(1) of the Act.

(o) Following one of the employee meetings at the Holiday Inn, Supervisor James Horan voiced strong opposition to the Union—''I'm tired of this ____ union shit''—and then asked Larry Schrager if he was for the Union. Schrager replied that he was not, because he valued his job. Such angry interrogation violated Section 8(a)(1) of the Act.

(p) When, a few days later, Supervisor Richard Scott told Schrager that ''Garney would never go union'' and that he would close down the shop before doing so, he uttered a clear threat which violated Section 8(a)(1) of the Act.

(q) When nonsupervisory agent Robert Demi told Schrager to ''back off'' supporting the Union and that Garney would never go union but would close down and open up under another name, using only loyal employees, he uttered a threat which violated Section 8(a)(1) of the Act.

(r) During the month of November, Morris told William A. Whalen III that he had great plans for Whalen which he could not disclose because of the union drive. However, he stated that Whalen would someday be making $15 an hour, plus leadman pay, and would be running a job. He added that the Union could not guarantee Whalen as the Respondent could. This promise of benefit was designed to persuade Whalen to abandon his support for the Union and was a violation of Section 8(a)(1) of the Act. Not long thereafter, the Respondent transferred Whalen to several prevailing wage jobs where, because of the Davis-Bacon Act requirements, the hourly wage far exceeded what the Respondent was paying on other jobs. This transfer was simply a part of the effort to provide Whalen with financial inducements which would lead him to reject unionization. As such, it violated Section 8(a)(1) of the Act.

(s) In October 1989, Supervisor Charles Stevenson told Schooley and Goshee that, as soon as this ''union shit'' blows over, union sympathizers would be ''taken care of.'' He included mechanic Aldrich in his statement. This threat to discharge union adherents was another flagrant violation of Section 8(a)(1) of the Act on the part of the Respondent.

(t) Scott's statement to Hughes that Garney Morris had heard that he was for the Union constituted giving the impression of surveillance of union activities in violation of Section 8(a)(1) of the Act. His further suggestion that Hughes let Morris know his true feelings as soon as possible was an implied threat of reprisal and another violation of Section 8(a)(1) of the Act.

(u) Supervisor Stevenson's statement to Whelan at the Hoeganese jobsite that he had come out there to spy on Jack Schlack and that Schlack was there to spy on Whelan constituted an admission of surveillance of union activities of employees and a violation of Section 8(a)(1). Stevenson's further statement to Whelan to ''watch his back'' constituted a threat of possible reprisal for engaging in union activities in violation of Section 8(a)(1) of the Act.

(v) Stevenson also told Whelan that the Company was investigating whether he was doing his IBEW apprenticeship homework during working hours because they wanted to claim that he was engaging in union activities during prohibited hours. This statement indicated that the Respondent was seeking a pretext to discipline or discharge Whelan for union activities and was a threat which violated Section 8(a)(1) of the Act.

(w) At one of the meetings at the Holiday Inn, Morris told the assembled employees that Raffa was on ''thin ice.'' The reference was to a failure of Raffa to perform Sunday work. This matter had been discussed between Morris and Raffa at an interview during which Morris told Raffa that he was having trouble sleeping at night because he was wondering why anyone would want to bring a union into the Company. The utterance at the general meeting, a meeting called for the purpose of resisting the organizing drive, was designed to threaten Raffa's job publicly because of Raffa's support for the organizing campaign. As such, it violated Section 8(a)(1) of the Act.

(x) Morris' statement to Raffa during Raffa's terminal interview, namely, that he was not going to take ''the union stuff'' and was not going to let the Union tell him how to run things, was, in effect a statement to Raffa that the latter was being discharged for union activities. Such a statement violated Section 8(a)(1) of the Act, quite apart from the violation of Section 8(a)(3) for which it is primary evidence.

(y) Bruce Prendergast was the leadman on the job where Michael Harrison was working at the time Harrison was discharged. As such, he was the principal company representative on that job and, like all leadmen, a supervisor within the meaning of the Act. Prendergast warned Harrison to ''watch [his] ass because they were out to get [him],'' reciting the fact that Scott had visited the jobsite at a time when Harrison was not present because of Harrison's delay in getting to work. Such a threat, which was carried out on the following day, was union related and constituted a violation of Section 8(a)(1) of the Act.

(z) Sometime after he had been laid off, Goulet went to the company office and, while waiting to see Morris, engaged in a conversation with Morris' secretary. Morris took exception to a remark relating to the business which he overheard Goulet making to the secretary, became enraged, grabbed Goulet by the shirt, and told him ''you and 'Reds' Kennedy get the hell out of my office.'' Kennedy, the Union's business agent, was nowhere in the vicinity. Committing an assault on an employee because of his activities on behalf of a union is an egregious violation of Section 8(a)(1) of the Act and is what happened in this instance.

(aa) In April 1991, in a discussion which took place with Jerome E. Quinn at the company office, Morris told Quinn that, as soon as he recouped the financial loss he had sustained on the U.S. Pipe job, he would have sufficient funds to fight the Union and would be able to appeal his case four times and keep it in litigation 3 or 4 years. He punctuated his remarks with the statement that, ''if the Union thinks it's going to get in here, they are going to have a long wait.'' A threat to engage in delaying tactics and to engage in protected litigation in order to defeat an organizing drive is a violation of Section 8(a)(1) of the Act. It is such a threat that Morris made to Quinn on this occasion.

(bb) Shortly thereafter, Henry had occasion to talk to Quinn about the unionization of the Company. He told Quinn that, in the event of unionization, Morris would keep his top four mechanics and get rid of the others. He asked Quinn if the latter thought that he was one of the Company's top four mechanics. When Quinn admitted that he was not, Henry went on to say that the other mechanics would then be on the outside looking in. These statements constituted a threat to close the Company and to discharge employees in the event of unionization and violated Section 8(a)(1) of the Act.

3. The Outside Employees Committee and the allegation of a violation of Section 8(a)(2) of the Act

At the second meeting at the Holiday Inn, Morris suggested that employees form their own committee to present grievances and suggestions to him rather than resort to an outside bargaining agent. In a post-Christmas letter to employees, he announced the holding of ''our first monthly meeting'' of the Outside Employees Committee and management for January 17 at a designated restaurant. In that letter, he urged employees to get on with the business of selecting their representatives.

An organizational meeting of the Outside Employees Committee took place across the street from the Respondent's office at a church which the Respondent had used from time to time for company meetings. Attendance was recruited by Scott, who asked leadmen to inform employees of the time and place of the meeting. About 20 attended, including at least 1 supervisor, John Henry. At this meeting, representatives were selected and a list of proposals were drawn up for presentation to management.

The meeting originally scheduled for January 17 was postponed until early February and took place in the format of a breakfast attended by six employee representatives and several management representatives, including Morris. Morris set up the breakfast meeting and paid for the food that was served. At this meeting, a long list of proposals was made by employee representatives which touched on almost every major facet of wages, hours, and terms and conditions of employment. After it was presented, Morris turned most of them down but did agree to two or three requests. After the breakfast meeting concluded, no further activities were engaged in

by the committee and no further meetings were held by its representatives with management.

These facts make it clear that it was Morris, not rank-and-file employees, who initiated the idea of an Outside Employees Commitee and that it came into being by virtue of his repeated prodding of employees to proceed with the project. When employees were selected and met with Morris, the topics of their conversation were just the items that would be part of any contract negotiation. The committee acted as a labor organization, it was formed at Morris' request, and came into being only by virtue of his efforts. He both dominated and assisted the committee from its inception. Accordingly, the Respondent, by virtue of his acts and conduct, violated Section 8(a)(2) of the Act.

4. The discharges or layoffs of Harrison, Raffa, Aldrich, Goulet, Hughes, and Quinn

a. *Michael Harrison*

Harrison was hired by the Respondent in September 1989. He disclosed to Robinson, who interviewed him, that he had been a member of an IBEW local other than No. 269. Robinson's reaction was to tell Harrison that he would have to clear his application with Morris before he could be hired. After Harrison was hired, he told Morris that he was interested in hearing what Local 269 had to say. He also refused to sign a letter, presented to him by Henry, renouncing the Union. Shortly thereafter, Morris told members of his management team that he did not quite trust Harrison.

Harrison signed a Local 269 authorization card and was discharged within a few days after doing so. Armstrong credibly testified that efforts were made to place Harrison at jobsites where prime contractors would require drug screening, in the hope that Harrison would not pass such a test and the Respondent would have a basis for discharging him. The day before he was discharged, the leadman on the job warned Harrison to ''watch his ass.''

On or about November 7, Harrison was late to work because he had been delayed in his commute by the opening of a drawbridge. It was for this tardiness that he was assertedly released, although there is ample evidence in the record that the Respondent regularly tolerated lateness on the part of its field employees, on some occasions as much as 10 or 20 times. Harrison went to the company office and spoke with Morris, accusing Morris of firing him because he was prounion. His complaint had merit. Harrison's discharge was marked by all the elements of a discriminatory discharge—intense animus, company knowledge, abrupt timing, and a pretextual reason which singled out Harrison for disparate treatment. Accordingly, I conclude that Harrison was discharged in violation of Section 8(a)(3). The General Counsel requests no remedy respecting Harrison and none will be recommended. I will include Harrison in the bargaining unit as of December 5, 1989, the date on which the General Counsel alleges that the Union had majority status, and I will include Harrison's card among those being counted toward that majority. *Air Express International,* 245 NLRB 478 (1979), and cases cited there at 501.

b. *Keith Raffa*

Raffa was an apprentice who had worked for the Respondent slightly more than a year when he was dicharged on November 16, 1989. He was a friend of Morris' son, Garney Morris Jr. and was his schoolmate before coming to work for the Respondent. During the period of time he was on the Respondent's payroll, he had progressed from $5.50 an hour to $6.75 an hour and had received a commendation, dated January 1989 and signed by Robinson, to the effect that he was a diligent, hard-working helper, ''who is always on time and willing to work.''

The Respondent's view of Raffa changed quickly and dramatically after Raffa became involved in the Union's organizing drive. Raffa attended a union meeting in early November, signed a card, and later refused to sign a letter presented to him and others by Henry renouncing any interest in unionization. He repeatedly promoted unionization in conversations with other employees on the jobsite at U.S. Pipe. The Respondent knew Raffa was prounion. Morris included him in a verbal list of young employees who were foolish enough to join a union and who, in his opinion, needed to learn a lesson. Within a week or two proceeding the discharge, Morris called Raffa into the office, reprimanded him for not showing up for work on Sunday, as scheduled, and told Raffa that he was having trouble sleeping at night trying to figure out why anyone would want a union to come into the Company. At the second Holiday Inn meeting, Morris stated publicly that Raffa was on ''thin ice.''

The thin ice cracked a day or two after that meeting. Raffa and his commuting companion, Steven Aldrich, were late to work by 5 minutes because Aldrich's car had a flat tire. They called the jobsite to say they would be late but the phone was out of order. For this offense, Raffa, who had been commended earlier in the year for his punctuality, was discharged, although Aldrich, who was *in pari delicto,* was not. When Aldrich took up the cudgels for Raffa and told Morris that their late arrival was his fault, not Raffa's, Morris snapped that the whole question was personal and none of Aldrich's business. When Raffa protested his discharge directly to Morris, Morris told him that he was going to make an example out of him, was not going to take ''the union stuff,'' and was not going to let the Union tell him how to run his business. Morris' remarks provide a rarity in Board practice, namely, direct evidence of the discriminatory intent prompting a discharge. On this occasion, I will take Morris at his word and find that, by discharging Raffa because of his union activities and union sympathies, the Respondent here violated Section 8(a)(3) of the Act. For reasons stated above with regard to Harrison, Raffa's card should be counted toward the Union's majority status as of December 5.

c. *Stephen Aldrich*

Aldrich had worked for the Respondent as a class B mechanic for about 16 months when he was laid off on December 21, 1989. During the course of the organizing drive, he provided the Union with the names and addresses of employees to be solicited, passed out about 20 union cards, and signed a card himself. He worked on the U.S. Pipe job under Henry's supervision and direction. Henry testified that Aldrich was one of the employees on that job who was continually promoting the union cause and disparaging the Company. Aldrich repeatedly told Henry that he was ''100%'' union.

On November 16, 1989, Aldrich received the following memo from Garney Morris with his paycheck:

To: Steve Aldrich
Date: 11–16–89

As per my discussion at the 11–14–89 meeting and previous discussions your review date has been adjusted from

4–27–90 to *1–27–90*

Please mark your calendar and call for an appointment two weeks in advance. I will then get together with you, John Robinson, and Rich Scott.

Thank you.

In mid-December, Scott told him that he was being laid off. This was the last time that Aldrich ever worked for the Respondent. The reason given by Scott for the layoff was lack of work. At the time Aldrich was laid off, the Company was still utilizing the services of temporary help that had been supplied by a labor service and by other contractors. It was also advertising for industrial and commercial electricians in the Philadelphia *Inquirer*. Aldrich credibly testified that there was enough remaining work on the particular job to which he had been assigned to last beyond Christmas.

Sometime in January, Aldrich received a phone call from Scott on a Wednesday informing Aldrich that he wanted to put him back to work the following Monday. Aldrich told Scott that he would be out of town for the weekend but asked Scott to call his home on Sunday evening and put on his answering machine the necessary information as to where and when to report. Scott never placed that call nor did he ever phone Aldrich again to call him back to work voluntarily. (Aldrich was reinstated in July 1990 pursuant to a settlement of an unfair labor practice charge.)

In the case of Aldrich, the Respondent was faced with a union activist of known proportions. Its original reason for laying him off was pretextual, in that it had work available and was keeping on its payroll temporary employees drawn from an agency and from other contractors in place of a grade B mechanic to whom it had recently promised an accelerated wage review. Its activity in purporting to recall him a month later was nothing but a runaround, as evidenced not only by an offer of employment which never materialized but also by the fact that in nearly 5 months which elapsed since the purported recall, it did not contact him concerning a return to work until it was forced to do so. In light of these considerations, it is plain that the Respondent discharged Aldrich because of his union affiliation and activities in violation of Section 8(a)(3) of the Act and not because of any shortage of available work.

d. *Bruce Goulet*

Goulet had been self-employed in the electrical trade and came to the Respondent's office looking for a job in response to an ad which offered, among other things, a $500 bonus after 90 days of employment. He was hired in October 1989, and assigned to the night shift at the U.S. Pipe job, the largest project on the Respondent's books. During the course of the hiring-in interview, the Respondent learned that, while operating his business, Goulet had obtained a letter of assent with Local 269 which authorized him to hire union craftsmen under union contract provisions without formally entering into an ongoing contractual relationship with Local 269. I credit Goulet's statement that, on coming to work for the Respondent, the parties discussed the fact that Goulet had a pipe bender which was available for rental but that no other discussion occurred relating to his history or status as an entrepreneur. I also credit Goulet's testimony that no limitation was placed on his tenure of employment and that the job which was offered by the Respondent was a permanent one, notwithstanding the fact that Goulet was laid off after his 87th day of employment.

While on the U.S. Pipe job Goulet signed a union authorization card dated November 7. The Respondent contends that the card should not be used to determine the Union's majority as of December 5 because Goulet was a temporary employee and not properly includable in the bargaining unit. There is nothing in the record which supports the Respondent's contention that Goulet was hired on a temporary basis so I will include his card in determining the Union's majority status as of December 5, a time when Goulet was working regularly at the U. S. Pipe job.

Goulet's layoff presents a situation in which an employer who has repeatedly demonstrated not only animus but a proclivity for taking illegal action designed to frustrate an organizing drive laid off an employee who has engaged in union activities and who was known to have dealt with the Union in the past. Moreover, it was attended by the false claim that Goulet's employment was only temporary in character, a claim which also serves to assist the Respondent in diminishing the Union's majority status. When Goulet visited the company office after his discharge to obtain payment for equipment rental, he was met with the wholly irrational and irate statement by Morris that he and Union Representative ''Reds'' Kennedy should ''get the hell'' out of the office, a statement demonstrating Morris' personal hostility toward Goulet as a union sympathizer. This statement then led to an assault during which Morris physically removed Goulet from the office. In light of these factors, I conclude that Goulet was discharged because of his membership in and activities on behalf of the Union in violation of Section 8(a)(3) of the Act.

e. *John Hughes*

John Hughes started to work for the Respondent on August 7, 1988. By August 1989, he had become an A mechanic. After the organizing began, Scott told him that he should let Morris know that he was not for the Union because Morris felt that he might be. He urged Hughes to speak with Morris on the subject as soon as possible. When he went to Morris' office, Hughes gave Morris an ambiguous statement about his feelings, saying that Morris ''did not have to be concerned'' about how Hughes felt toward unionization. Hughes signed a union card on November 4, 1989, and distributed cards to other employees. The Respondent had more than an inkling of Hughes' union sympathies according to Armstrong, who testified that Hughes was taken off the work assignment list because of his union activities.

Hughes attended the meeting of the Outside Employees Committee which was held in the church across the street from the Respondent's office and, during the course of the meeting, was elected to the six-man committee. He attended the breakfast meeting in February which Morris held for the committee during which employee grievances were presented.

In April 1990, Hughes was laid off at a job in Oxford Valley and asked Morris for an assignment. He received 5 days' work and was laid off again. He complained to Scott about being laid off when leadmen were calling the office asking for mechanics. He was given only occasional 1-day assignments, notwithstanding his complaint.[19] On April 30, 1990, a charge was filed on his behalf. It was amended 2 months later. Morris spoke with Hughes about the charge, criticized him for filing a charge rather than presenting his grievance to Morris directly, and complained that charges and litigation before the Board were costing him money. Throughout the ensuing several months, Hughes was given only short-term assignments, being hired and laid off with great rapidity up to and including November 12. On one occasion, when he came to the office to complain directly to Robinson, Robinson told him to ''get the hell out of the office.'' In November, Hughes was assigned to the Hydrocarbon job, one which he was told would be a ''lifetime job.'' He lasted 1 day and was removed, assertedly because the crew leader said that he had a ''bad attitude.'' In labor relations jargon, the phrase ''bad attitude'' is frequently found to be a code word for a prounion attitude. In this case, Hughes testified credibly that the foreman in question had made no complaint to him about his attitude, and the foreman in question was never summoned to substantiate the Respondent's story. Morris admitted that, while Hughes was in layoff status, he frequently transferred employees with less seniority from one job to another rather than recalling Hughes, a practice at odds with the Respondent's announced practice of honoring seniority in making layoff and recall decisions.

In short, a virulently antiunion employer directed its attention in this instance to a known union adherent on whose behalf a charge had been filed and, rather than terminate him on a permanent basis, laid him off repeatedly for periods of time, all the while complaining to him about the cost to the Company occasioned by the charge which was pending. These factors amply support the conclusion that the Respondent repeatedly laid off Hughes because of his union activities and because a charge had been filed with the Board on his behalf. In so doing, the Respondent here violated Section 8(a)(3) and (4) of the Act.

f. *Jerome E. Quinn*

Quinn came to work for the Respondent in August 1988. At the time of his discharge on June 28, 1991, he was classified as a class A mechanic earning $14.25 an hour. During the campaign in the fall of 1989, Quinn passed out union authorization cards to fellow employees and signed a card on November 7. His son, Thomas Quinn, an employee of the Respondent at that time, also signed an authorization card.

Most of the Respondent's attention toward Quinn began in the late spring of 1991, about 2 months before he was discharged. In the spring of 1991, Henry heard various employees mention the fact that Quinn was a union supporter. On May 6, 1991, the Respondent learned for sure that both Quinns had signed union cards because those cards were disclosed to the Respondent on the date originally set for a hearing in several of these consolidated cases. The disclosure was part of an agreement on the part of the Respondent here to recognize the Union in the event that an FBI handwriting expert certified that a majority of the cards presented contained valid signatures.

It was shortly before this date that Garney Morris had congratulated Quinn and two other employees in the company office for doing a good job on a project in Baltimore.[20] Quinn had taken some special training to enable him to work at jobsites where toxic waste was present. The Baltimore job was one of those projects. It was following this conversation that Morris told Quinn that he would soon have enough money to fight the Union and that he could delay the pending Board proceeding 3 or 4 years. It was during May that Henry, while speaking to Quinn at a New Jersey jobsite, had warned Quinn that, if Garney Morris were to go Union, he would keep his four top mechanics and get rid of the others. He elicited from Quinn an admission that the latter was not one of Morris' top four mechanics.

Beginning in May, the Respondent began to issue both verbal and written warnings to Quinn about his work. The common thread running through these warnings was that Quinn was a slow worker. Quinn testified credibly that the pace of his work in May and June was no different from what it was in previous months and years when he had received commendations and wage increases from the same Respondent. He was ostensibly discharged because of customer complaints which had been lodged against him. However, none of these complaints had been brought to his attention while he was working; he first learned of them after his discharge at a hearing where the Respondent contested his claim for unemployment benefits.

Quinn's discharge presents a case of an anitunion employer who was satisfied with an employee's performance, albeit a slow-paced performance, until he learned for sure that the individual in question was a union adherent. Thereafter, the employee became the subject of antiunion pressure and a series of verbal warnings which prepared the groundwork leading to discharge. Accordingly, I conclude that, by discharging Jerome Quinn because of his union activities, the Respondent here violated Section 8(a)(3) of the Act. Whether, and to what extent, he has been reinstated to a similar or substantially equivalent position, I leave to the compliance stage of these proceedings.

5. The new warning forms and procedures

The Respondent admits that, in the summer of 1990, it instituted a new and much more detailed warning form than the one it had been using for 10 years. This change involved not only a different document but a different procedure as well. Under the former practice, a generalized complaint was placed in the employee's personnel record. It recorded whether the discipline was an informal noting formal warning, or a reprimand. There was also a place on the form for an indication whether the discipline in question was the first, second, or third such caution received by the employee, as

[19] Scott asked Hughes if he would agree to taking short-term assignments. Hughes replied that he would do so if that was the best he could get, provided such assignments would not interfere with his eligibility to collect unemployment insurance.

[20] On November 21, 1990, Quinn received a merit increase from $13.50 to $14.25 an hour. Robinson and Morris signed a personnel and payroll slip, which was placed in Quinn's record, that read, ''Thank you for your help at Allied this past year. Keep up the good work.''

well as a place where the supervisor could write a narrative description of the reason for the warning if he chose to do so. The new form was much more detailed. It provided space for a narrative description of the reason for the warning, another place for a reply by the employee, and a place for the ultimate determination by the supervisor, based presumably on the contents of the document. An employee was called on to sign the form, even if he made no other reply, and would not be permitted to return to work after receiving a written reprimand unless and until he did sign it. One employee, Hughes, refused to sign a form presented to him and was not allowed to return to work until he relented. Scott told him that the new form had been implemented ''because of everything that has been going on'' and because the Company needed to keep records of disciplinary matters.

The Respondent's obligation to bargain collectively concerning changes in wages, hours, and working conditions arises when a union has achieved majority status and has made a demand for recognition. As discussed more fully infra, the Union achieved majority status on December 5, 1989, and made a demand for recognition early in January 1990. There is no suggestion that any bargaining took place over the implementation of the new disciplinary form and its attendant procedure. Accordingly, by unilaterally instituting a new condition of employment, the Respondent here violated Section 8(a)(5) of the Act. The motivation for the change was summed up by Scott, namely, that it was implemented in response to the attempted unionization of the Respondent's employees and the Respondent's desire to keep better records of employee work infractions. Having been devised by an antiunion employer as one further means of thwarting a union drive and intimidating its employees, the new form and its implementation also violate Section 8(a)(3) of the Act.

Because the new form and the new procedure were illegally implemented, it follows that the Respondent committed further violations of Section 8(a)(3) of the Act each and every time it utilized the new form and the new procedure to issue a warning shift. Those instances reflected in the record are:

> (A) Warning issued to Hughes for removal on or about 11/6/90 from the Hydrocarbon job.
>
> (B) Warning given to Hughes at the same time for not showing up for work on 11/5/90 after being told that there would be no work but that he should call in.
>
> (C) Warning given to Hughes on the Dynatec job on or about 12/3/90 concerning allegations that Hughes had ''lost his former productivity.''
>
> (D) Warning given to Hughes in late January, 1991, for lateness in turning in his weekly time card.

The Respondent asserted in its answer to the consolidated complaint that there were no written warnings in Quinn's file. However, on at least three different occasions in the spring of 1991 Quinn was given verbal warnings as part of the Respondent's effort to prepare the way for his discharge. Complaints by Robinson on or about April 16, 1991, concerning Quinn's slowness and by Scott on June 18 for the same reason were discriminations in hire or tenure prompted by discriminatory reasons and hence were violations of Section 8(a)(3) of the Act. I so find and conclude.

6. The refusal of the Respondent to bargain collectively in good faith with the Union

a. *Majority status*

The Respondent readily admits that it has never recognized or bargained collectively with the Charging Party on any subject. It challenges the Union's majority status on the basis of considerations relating both to the composition of the bargaining unit and the validity of certain authorization cards. The Union claims that it achieved the status of bargaining representative on December 5, 1989, and was entitled to recognition on and after that date. Its demand for recognition in January 1990 was summarily rejected by Morris.

(1) The unit

The parties agree that an appropriate bargaining unit should include all full-time and regular part-time electricians, helpers, and apprentices employed by the Respondent at its Levittown, Pennsylvania facility, with the usual exclusions. The parties further agree that, on the date in question, at least 67 persons were employed in that unit. The General Counsel would also include, inter alia Irwin Bennis, Bruce R. Goulet, Wayne O'Neil, and Nicholas Panariello. The Respondent claims that they were only temporary employees and hence not entitled to inclusion in the unit.

A temporary employee not entitled to be included in a bargaining unit is one who is hired for a definite limited period and who is discharged or laid off without reasonable expectation of recall. *Meier & Frank Co.*, 272 NLRB 464 (1984). The four individuals mentioned above do not fit this description. Goulet was hired without limitation on his tenure. He was a full-time employee and treated for all purposes as the Respondent treated any other employee. He left the Respondent's payroll in January 1990, on the 87th day of his employment, thus becoming ineligible to collect the advertised $500 bonus which was supposedly available to new hires who remained more than 90 days; however, he did not leave of his own accord. He was discharged, as found above, because of his support for the Union. He was a regular full-time electrician who was on the Respondent's payroll on the critical date. Accordingly, he should be included in the unit and his card should be counted toward the Union's majority.

Bennis was a full-time electrician who was also on the Respondent's payroll on the critical date. He was hired in September 1989, and was laid off in January or February of the following year. When he was hired by the Respondent, he was told he was being hired for a job on which he could expect to work for a year and a half and that he could expect plenty of overtime. In a standard Christmas bonus letter which Morris sent to Bennis, Bennis was given a bonus and told that the Respondent was ''looking forward to the New Year working together.'' In terms of treatment or compensation, Bennis was treated the same as any other employee in the bargaining unit in his skill classification. Accordingly, he should be included in the unit on the critical date and his card should be counted toward the Union's majority.

O'Neil was and is regularly employed as an electrician by the General Motors Corporation. In November 1989, he learned about job openings with the Respondent from a newspaper ad and applied for part-time employment. When he was hired, the Respondent was well aware of his regular

employment. Robinson, who interviewed him, told O'Neil that ''we'll work together on it'' in reference to fitting his schedule at General Motors with his work at the Respondent's various jobsites. O'Neil was also told by Robinson that the Respondent had ''plenty of work.'' There was no suggestion, either during the hiring interview or any other time, that O'Neil was being hired temporarily.

From November until his layoff in January, O'Neil regularly worked 25–30 hours a week for the Respondent. His shift for General Motors lasted from 3 until 11 p.m. He worked for the Respondent from 7 a.m. to 1 p.m. during the week and also worked on weekends. He was on the Respondent's payroll on the critical date and did not leave until the Respondent laid him off, ostensibly for lack of work. The fact that O'Neil was moonlighting for the Respondent does not detract from his status as a regular part-time employee. Accordingly, I will include him in the bargaining unit and count his card toward the Union's majority status on December 5.

Panariello was and is a regular employee of the New York Telephone Company. He was on strike in August 1989, and was hired by the Respondent during this period of time as an electrician. There was no indication, either at the time of his employment or later, that he was being hired only for the duration of the telephone strike. His understanding with the Respondent was that he would continue to work for it so long as there was work available. He continued to work a 20-hour week after the strike ended in December 1989, and did so until January 1990. His schedule after the telephone strike ended was that he worked from 11 p.m. until 5 a.m. for the phone company and from 1 until 5 p.m., 5 days a week, for the Respondent. Panariello quit the Respondent of his own volition at the end of January but did so only because work was getting slow. On the critical date he was a regular part-time electrician who should be included in the unit and whose card should be counted in determining the Union's majority status.

The General Counsel would include in the bargaining unit an electrician named Brian Teichman and asks that his card be included in determining the Union's majority status. Teichman worked for the Respondent for a number of years as a class B electrician. He suffered a back injury at a jobsite in August 1989, and was off work on disability drawing workers' compensation on December 5, the date on which the Union wishes majority to be determined. Teichman has yet to return to work. Even though he had not worked for a period of several months, the Respondent sent him a Christmas bonus on December 19, some 2 weeks after the critical date, and accompanied the bonus with a note similar to the one sent to every other employee, namely, that Morris was looking forward to working with Teichman during the following year. On March 1, 1991, the Respondent reported to the Internal Revenue Service that Teichman ''has been off on workers compensation from 8–17–89 to present.'' At no time was Teichman ever discharged or laid off following his injury and at no time has he resigned. It is well settled that an employee who is absent for sickness or disability is presumed to continue his employee status; this presumption will continue unless his employer demonstrates that he has been terminated or has resigned. *Atlanta Dairies Cooperative*, 283 NLRB 327 (1987). No such showing appears in the record in this case. Accordingly, I will include Teichman in the bargaining unit as of December 5 and count his card toward determining the Union's majority status on that date.

As noted previously, Harrison, whose inclusion in the unit is challenged by the Respondent, should be included because he was discharged discriminatorily a month before the critical date and was, in contemplation of law, an employee in good standing on that date. The same determination must be made in the case of Raffa, who was also discharged in violation of the Act before December 5. Accordingly, he should be included and his card counted. The Respondent would include John Henry in the bargaining unit. However, as found above, Henry was and is a supervisor within the meaning of the Act and must be excluded.

The final unit determination dispute involves Fred McRoberts. There is no contention that McRoberts was a supervisor but, for purposes other than unit determination, the General Counsel did contend that McRoberts was a nonsupervisory agent. McRoberts was a partsman who worked at the Respondent's shop in Levittown. His only contact with field employees was to drive a truck from the shop to jobsites from time to time to deliver parts. He frequently attended management meetings at the company office and was included in meetings with the Respondent's labor counsel where antiunion strategy was discussed and decided. McRoberts had no community of interest with regular and part-time electricians, helpers, and apprentices, and did not, during his employment, fall in any of these job classifications. Accordingly, he should be excluded from the unit.

In sum, the total bargaining unit as of December 5, 1989, included the 67 stipulated members, together with Bennis, Goulet, O'Neil, Panariello, Harrison, Raffa, and Teichman, or a total of 74 people. I so find and conclude.

(2) The cards

Based on a determination by the FBI's handwriting expert, the Respondent agreed that 33 cards proffered by the General Counsel in support of the claim that the Union had majority status on December 5 were valid. Among this number are individuals whose unit inclusion was discussed above. The Respondent challenged 10 cards on the basis of some alleged irregularity or problem relating to the cards. In some instances, the irregularity was nothing more than the inability of the handwriting expert to make a positive comparison. In such instances, the General Counsel summoned the card signers themselves to identify their signature under oath at the hearing. Employees Thomas Buck, Terrence McGovern, Raymond Randall, Larry Schrager, and William Warner personally identified the signatures on their cards and did so without contradiction. Their five cards will be counted. The Respondent objected to the cards of Elmer Jester and Thomas Quinn on the basis that the cards themselves were undated. Both employees identified their cards under oath and testified that they were each signed within the first 10 days of November, well in advance of the critical date. In each instance, their testimony was uncontradicted. There is no requirement that a card actually be dated in order to be valid so long as it can be established that the card was signed on or before the date on which majority status is being determined. In both instances, such was done in this case, so Jester's card and T. Quinn's card should be counted toward the Union's majority status.

James O'Neill testified credibly and without contradiction that he signed a card well in advance of December 5. As a precaution, he signed a second one the following February because his first card was misplaced. He testified that the one he signed on the earlier date was identical to the one signed later on. It is well settled that the testimony of an employee can be used to determine majority status when, as here, the card signed by that employee has been misplaced. *Hestrom Co.*, 223 NLRB 1409 (1976). Accordingly, I will count O'Neill's card toward the Union's majority status.

In sum, on the critical date, the Union had obtained authorization cards from a total of 41 employees in a bargaining unit of 74 employees, well in excess of the number needed to establish majority status. Accordingly, I find that, since December 5, 1989, the Charging Party here has been the duly authorized collective-bargaining representative of the Respondent's mechanic bargaining unit.

b. *Refusal to bargain*

In January 1990, the Union made a verbal demand for recognition and bargaining in a phone conversation between Kennedy and Morris. Morris flatly rejected the demand at a time when he was under a legal duty to grant recognition and begin negotiations leading to a contract. By failing and refusing to recognize and bargain with the Charging Party as the duly authorized representative of its mechanic employees, the Respondent here violated Section 8(a)(5) of the Act.

c. *The unilateral discontinuance of gas and toll benefits and Respondent contributions to its 401(k) retirement plan*

On October 24, 1991, the Respondent distributed to all employees a notice which read in part:

> Beginning today we must all begin to really tighten our belts. As you know the economy is very poor, our work load is very light and unemployment in this country is again on the rise. In order to keep as many men working as possible we must temporarily stop the company contributions to the 401K and eliminate the gas and toll benefits paid to employees who are driving their personal vehicles. I hope you will all try your best to car pool with employees who have company vehicles.

The letter went on to note certain exceptions to the gas rule, provided permission was obtained in advance for any gasoline purchase for which reimbursement was requested.

There is no suggestion that the Union was notified of these changes, that it was offered an opportunity to bargain about them, or that it consented to them. Whether they were implemented for sound business reasons, as indicated in the notice, is beside the point. What is of importance is that there was failure on the part of the Respondent to observe its duty to bargain over changes in the fringe benefits of its employees before they were implemented. By failing and refusing to take these steps, the Respondent here violated Section 8(a)(5) of the Act.

CONCLUSIONS OF LAW

1. Garney Morris Inc. is now and at all times material herein has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 269 is a labor organization within the meaning of the Act.

3. All regular full-time and regular part-time electricians, helpers, and apprentices employed by the Respondent at its Levittown, Pennsylvania facility, but excluding office clerical employees, guards, and supervisors as defined in the Act constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. Since on or about December 5, 1989, the Union here has been the exclusive collective-bargaining representative of the employees employed in the unit found appropriate in Conclusion of Law 3 for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to recognize and bargain collectively with the International Brotherhood of Electrical Workers, Local 269 as the exclusive collective-bargaining representative of the employees employed in the unit found appropriate in Conclusion of Law 3; by unilaterally instituting and implementing a change in its discipline form and its disciplinary procedure; and by unilaterally discontinuing payments to its 401(k) plan and discontinuing reimbursement of employees for gasoline purchases and toll payments, the Respondent here violated Section 8(a)(5) of the Act.

6. By discharging Keith Raffa, Stephen Aldrich, Jerome Quinn, Bruce Goulet, and Michael Harrison; by repeatedly laying off John Hughes because of their membership in and activities on behalf of the Union; and by adopting new disciplinary forms and implementing a new disciplinary procedure in response to the Union's organizing drive, the Respondent here violated Section 8(a)(3) of the Act.

7. By repeatedly laying off John Hughes because an unfair labor practice charge had been filed on his behalf, the Respondent here violated Section 8(a)(4) of the Act.

8. By the acts and conduct set forth above in Conclusions of Law 5, 6, and 7; by threatening employees with plant closure, discharge, and layoff if they supported the Union; by creating among employees the impression that their union activities are a matter of company surveillance; by promising and by granting to employees increases in compensation in order to persuade them to abandon their support for the Union; by threatening to engage in protracted litigation in order to defeat an organizing drive; by soliciting grievances with a view toward adjusting them during an organizing campaign; by coercively interrogating employees concerning their union activities, including but not limited to insisting that employees disclose in writing or by a showing of hands their union sympathy or lack of union sympathy; by threatening to monitor the activities of employees in order to find a pretext for discharge; and by assaulting employees because of their union sympathies or affiliations, the Respondent here violated Section 8(a)(1) of the Act.

9. The aforesaid unfair labor practices have a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent herein has engaged in certain unfair labor practices, I will recommend that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. Because the independent violations of Section 8(a)(1) of the Act found here are repeated and perva-

sive, and evidence on the part of this Respondent an attitude of total disregard for its statutory obligations, I will recommend to the Board a so-called broad 8(a)(1) remedy designed to suppress any and all violations of that section of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). The recommended Order will also recommend that the Respondent be required to offer to Keith Raffa, Stephen Aldrich, Jerome Quinn, Bruce Goulet, and John Hughes full and immediate reinstatement to their former or substantially equivalent employment and to make them whole for any loss of earnings which they may have sustained by reason of the discriminations practiced against them, in accordance with the *Woolworth* formula,[21] with interest at the rate prescribed by the Tax Reform Act of 1986 for the overpayment and underpayment of income tax. *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The recommended Order will require the Respondent to expunge from the personnel files of all employees any disciplinary actions noted on the form which it illegally adopted and implemented, and will further require it to notify those employees that such action has been taken and that the infractions indicated on each of these forms will not be used as a basis for future discipline. The recommended Order will require the Respondent to reimbuse its 401(k) plan for all moneys which it has unlawfully withheld and its employees to whom gasoline and toll payments have unlawfully been withheld, with interest computed at the compliance stage of these proceedings. *Merryweather Optical Co*., 240 NLRB 1213 (1979).

The General Counsel and the Charging Party have requested, inter alia, a so-called *Gissel* remedy which would require the Respondent to recognize and bargain with the Union as the exclusvie collective-bargaining representative of its mechanics. In this case, the Respondent engaged in a campaign of wholesale intimidation and coercion of its employees immediately on learning that a union was undertaking an organizational campaign. Included in that effort were the layoff or discharge of several union adherents, the threat to discharge more, threats to close the business, a threat to delay the vindication of employee rights by the Board, repeated and coercive interrogation, physical assault, and promising and granting of benefits aimed at heading off the union drive. It is hard to imagine any conduct on the part of an employer which could more thoroughly decimate an organizing drive and more surely render a Board election meaningless. The Board and the Third Circuit have issued *Gissel* orders and decrees based on conduct far milder than that which was found in this case so I have no hesitance in recommending it here. *NLRB v. S. E. Nichols-Dover*, 414 F.2d 561 (1969); *NLRB v. Broad Street Hospital*, 452 F.2d 302 (1971); *NLRB v. Easton Packing Co*., 437 F.2d 811 (1971); *NLRB v. Colonial Knitting Corp*., 464 F.2d 949 (1972); *Toltec Metals v. NLRB*, 490 F.2d 1122 (1974); *Frito-Lay v. NLRB*, 585 F.2d 62 (1978); *NLRB v. Kenworthy Trucks of Philadelphia*, 580 F.2d 55 (1978); *NLRB v. Eagle Material Handling*, 558 F.2d 160 (1977); *Midland-Ross Corp. v. NLRB*, 617 F.2d 977 (1980). I will also recommend that the Respondent be required to post the usual notice advising its employees of their rights and of the results in this case.

[Recommended Order omitted from publication.]

[21] *F. W. Woolworth Co*., 90 NLRB 289 (1950).